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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

Subh
4/12/17

(SEE RULE - 4)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUJARATI BENCH
GUJARATI

ORDER SHEET

Original Application No : 336/02 -
Misc. Petition No. _____
Contempt Petition No. _____
Review Application No. _____

Applicant(s): Dipa B.K. Patel

- Vs. -

Respondent(s): State of Gujarat

Advocate for the Applicant(s): Mr. B.K. Sharma, Mr. K. P. Patel

Advocate for the Respondent(s): Mr. A. C. Patel, Mr. P. K. Vaghela

| Notes of the Registry | Date | Order of the Tribunal |
|---|----------|--|
| <p>Application is in order and is to be admitted. All the documents are in order. The application is admitted. IPD No. 34600702 Dated 11.12.02</p> <p><i>[Signature]</i> Ap. Registrar No. 2 12/12/02</p> | 13.12.02 | <p>Heard Mr. B.K. Sharma, learned Sr. Advocate for the applicant.</p> <p>Issue notice to show cause as to why the application shall not be admitted.</p> <p>List on 14.1.2003 for admission.</p> <p><i>[Signature]</i> Vice-Chairman</p> |
| <p><i>Slips complete later, Notice prepared and sent to D/S for filing the Respondent No 1403 by Regd A/D</i></p> <p>DINo 343363435</p> <p><i>Filed 26/12/02</i></p> | 23.1.03 | <p>Due to vacation, the case is adjourned to 23.1.2003.</p> <p><i>[Signature]</i></p> <p>Heard Mr. B.K. Sharma, learned Sr. counsel for the applicant and also Mr. B.C. Pathak, learned Addl. C.G. S.C. for the respondents.</p> <p>The application is admitted. Call for the records.</p> <p>The respondents are allowed four weeks time to file written statement.</p> <p>List on 20.2.2003 for written statement.</p> <p><i>[Signature]</i> Vice-Chairman</p> |

Member

Vice-Chairman

94

20.2.2003 Present : The learned Mr. J. K. Choudhury, Vice-Chairman
The learned Mr. S. C. Pattnaik, Administrative Member.

Four weeks time is allowed to the respondents to file written statement on the prayer of Mr. N. K. Choudhury, learned Adml. C.O.S.C. appearing on behalf of Mr. S. C. Pattnaik, learned Adml. C.O.S.C. for the respondents.
List on 21.3.2003 for order


S. C. Pattnaik
Member


Vice-Chairman

mb

21.3.2003

Written statement has been filed. The case may now be listed for hearing on 2.5.2003. The applicant may file rejoinder, if any, within ~~max~~ two weeks from today.


Vice-Chairman

mb

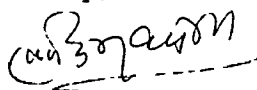
2.5.03

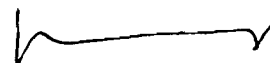
Adjourned. List again on 13.6.03 for hearing.

By order

13.6.2003

Heard the learned counsel for the parties. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is allowed with cost of Rs.2000/- (Rupees two thousand only).


Member


Vice-Chairman


nkm

20.3.03


MS submitted
by the respondents.



No rejoinder has been
filed.


1.5.03

No rejoinder has
been filed.


12.6.03

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. / ~~XXX~~ No. 396 of 2002

DATE OF DECISION 13.6.2003
.....
.....

Dipa Jyoti Paul
..... .APPLICANT(S).

Mr B.K. Sharma, Mr P.K. Tiwari and
Mr J. Purkayastha
..... . ADVOCATE FOR THE
APPLICANT(S).

- VERSUS -

The Union of India and others
..... .RESPONDENT(S).
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Mr. B.C. Pathak, Addl. C.G.S.C.
O.A. / R.A. No. ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN

DATE OF DECISION

THE HON'BLE MR R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of the judgment ?

4. Whether the judgment is to be circulated to the other Benches ?

- VERSUS -

Judgment delivered by Ho'ble Vice-Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
..... .RESPONDENT(S).

.....
..... . ADVOCATE FOR THE
RESPONDENT(S).

5

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.396 of 2002

Date of decision: This the 13th day of June 2003

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

The Hon'ble Mr R.K. Upadhyaya, Administrative Member

Dipa Jyoti Paul
Retired Income Tax Officer
Resident of Ward-II,
Silchar, P.O.- Silchar,
District- Cachar.

.....Applicant

By Advocates Mr B.K. Sharma, Mr P.K. Tiwari
and Mr J. Purkayastha.

- versus -

1. The Union of India, through the
Secretary,
Department of Revenue,
Ministry of Finance,
Government of India,
New Delhi.

2. The Commissioner of Income Tax,
Shillong.

3. The Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
New Delhi.

.....Respondents


By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

.....

O R D E R (ORAL)

CHOWDHURY. J. (V.C.)

The following are the reliefs prayed for in this
application:

1. To quash and set aside the Order F No.TDS/4/
Vig/Con/CT/90-91/Pt.III/DJP/2231 dated
7.3.1997 passed by the Commissioner of Income
Tax, N.E. Region, Shillong.
- 

2. Direct the respondents to open the Sealed Cover and on the basis of the recommendation of the Departmental Promotion Committee of April/May 1993 give notional promotion to the applicant to the post of Assistant Commissioner of Income-tax retrospectively with effect from 24.6.1993 that is the date on which his immediate junior Shri M.N. Das was given such promotion.

2. The applicant is a retired Income Tax Officer who attained his superannuation on 1.4.1997. While he was serving as an Income Tax Officer, Ward Silchar under the charge of the Commissioner of Income Tax, N.E. Region, Shillong, the applicant was served with a Memorandum of Charges dated 22.7.1993 under Rule 14 of the CCS (CCA) Rules, 1965. The applicant submitted his written statement of defence denying the charges. An Inquiry Officer was appointed to conduct the enquiry. The Inquiry Officer exonerated the applicant from the charges as will appear from the following findings of the Inquiry Officer:

"This case arose from a fraud for refund of alleged Tax Deducted at Source (TDS), articulated by an employee of the State Government of Manipur. The Income Tax returns submitted by the alleged culprit at the Income Tax Office, Ward, Silchar were accepted and refunds were sanctioned on the basis of the TDS Certificates and Scheduled Tribe Certificates enclosed with the refunds. The allegation against the Income Tax Officer is that he issued the refund orders without verifying the genuineness of the TDS Certificates and Scheduled Tribe Certificates.

The refund orders were issued under Section 143(i) of I.T. Act, 1961 applicable for Summary Assessment Scheme. This was not disputed by the department.

The thrust of various circulars/notices/clarifications issued till then by the department with regard to the above mentioned Section for Summary Assessment Scheme was speedy disposal of

such.....

such cases. The Assessing Officers were given the impression that only arithmetical errors were to be rectified. No other check was warranted. Even where apparent losses to the Government were noticed subsequent to assessment, no remedial measures were required to be taken. In one instance, Rs.2.34 lacs was condoned by the department and this was cited as clarification/guidance. The alleged irregularity on the part of the Income Tax Officer is to be considered in this background. There was no apparent aberration in the TDS certificates. Nor the Assessing Officer had doubt about the community of the persons who filed the returns and appeared personally before him. Hence, he was inclined to accept the unattested copies of Tribal Certificates. That the returns were for pure refund and that the returns were filed for the first time were the only factors which should have prompted the Income Tax Officer to read between the lines. As a matter of abundant caution, Shri Paul should have inquired about the contracted work, payment of tax at source and the receipt of certificate for the same. The ITO had this option before him. He failed to exercise this option. But, such a failure cannot be said to be in contravention of any rule/direction/clarification in force at that time. The Assistant Commissioner of Income Tax with whom the CO discussed the matter had also not suggested for further inquiry."

The Inquiry Officer, therefore, held that charge of gross irregularity and negligence in the discharge of his duties was not substantiated. The Disciplinary Authority, on receipt of the report of the Inquiry Officer issued a notice on the applicant on 16.12.1996 to show cause as to why a minor penalty was not to be imposed on him on the basis of the report of the Inquiry Officer. The applicant submitted his representation on 2.1.1997. The Disciplinary Authority by order dated 7.3.1997 imposed the minor penalty of censure. The applicant submitted an appeal before the Appellate Authority as far back as on 31.3.1997 which is yet to be disposed of. The applicant preferred two O.A.s before this Bench, namely O.A.No.168 of 1998 and O.A.No.169 of 1998. In O.A.No.169/1998, the applicant assailed the penalty imposed on him and the applicant.....

applicant specifically took the plea before this Tribunal also that the respondent authority acted illegally in imposing the penalty on the face of the report of the Inquiry Officer without disagreeing with the same. The Bench, however by its order dated 26.8.1998 directed the authority to dispose of the appeal of the applicant within two months from the date of receipt of the order of the Tribunal. Mr P.K. Tiwari, learned counsel for the applicant, submitted that O.A.No.168 of 1998 was preferred for consideration of the case of the applicant for promotion. The Tribunal, however, declined to interfere at that stage in view of the direction issued to the respondents in O.A.No.169/1998. Though the order in O.A.NO.169/1998 was passed by the Tribunal as far back as 26.8.1998 for disposal of the appeal within the time specified, it remained unattended and the applicant again filed a Review Application before this Bench for appropriate direction. The Review Application was numbered and registered as R.A.No.5 of 2001. By order dated 11.10.2001, the Bench directed the respondents to dispose of the representation of the applicant within three weeks from the date of receipt of the order. Since the authority failed to dispose of the same the present O.A. has been filed assailing the action of the respondents including the imposition of penalty.

3. The respondents filed their written statement. From the written statement it appears that the appeal memo is yet to be disposed of which is pending since 1997. We gave the authority sufficient time for disposal of the appeal and thought it fit that the matter could be taken.....

taken care of departmentally, Since this was not done, the matter was taken up for consideration on merit. Admittedly, the Inquiry Officer found the applicant not guilty of the charges. The Disciplinary Authority did not disagree with the findings of the Inquiry Officer, but imposed a minor penalty on the ground that the applicant ought to have been more carefully. Nonetheless, it appears that the Disciplinary Authority did not disagree with any of the findings of the Inquiry Officer to the effect that the applicant did not commit any irregularity in the discharge of his official duties. Obviously, the charges were not proved and the Inquiry Officer dealt with the same and the Disciplinary Authority did not demur from the same. Interestingly, the Disciplinary Authority instead of exercising its own discretion, acted with the instructions of the Board which appears from the very order passed by the Disciplinary Authority. As a Disciplinary Authority it was incumbent on the said authority to consider the findings given by the Inquiry Officer freely without any constraints. Instead, the Disciplinary Authority abdicated its power and jurisdiction and thereby surrendered its authority to the dictates of the superior authority as reflected in its order of imposing the penalty. The full text of the said observations is reproduced below:

"The Board carefully considered the inquiry report and observed that since the refunds were claimed under section 10(26) of the Income-tax Act, 1961, the Income-tax Officer could have been more careful in checking the accuracy of Tribe Certificate issued by the Magistrate, or possibly, authenticated copy of the certificate could have been insisted upon. To that extent the CO is not free from blemishes. Taking into account the totality of facts on the part of the CO on the basis of the IO's report, the Board proposed to impose a minor penalty on the CO under Rule 11 of the CCS (CCA) Rules, 1965.

.....

"10. The Board after considering the submissions of the CO, has decided that a penalty of 'Censure' may be immediately levied on Shri D.J. Paul, the CO."

Obviously, the Disciplinary Authority abdicated his jurisdiction and left the matter to the Board which is the authority higher than the Disciplinary Authority. It is the Disciplinary Authority who is in charge of the duty to exercise discretion fairly without being fettered by the dictum of the higher authority. The Disciplinary Authority sadly failed to discharge its duty as enshrined upon him by law. The findings of the Disciplinary Authority on that ground alone is not sustainable in law.

4. There is another feature in this matter. Admittedly, on the own showing of the respondents the DPC meeting was held on 16, 17 and 21 June 1993 to consider for promotion to the grade of ACIT for the year 1992-93. On the own showing of the respondents, the recommendations in respect of the applicant was kept in sealed cover due to the disciplinary proceeding pending against him. The Memorandum of charges was issued to the applicant only on 22.7.1993, whereas the DPC meeting was held on 16, 17 and 21 June 1993. As per the O.M. dated 14.9.1992 of the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) sealed cover procedure under para 2 of the said O.M. can be taken aid of only on the following three cases:

i) Government servants under suspension;

ii) Government servants in respect of whom a chargesheet has been issued and the disciplinary

proceeding.....

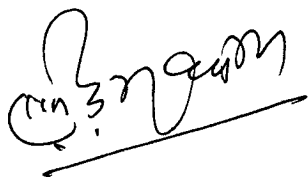
proceedings are pending; and

iii) Government servants in respect of whom, prosecution for a criminal charge is pending.

None of these conditions was operative against the applicant when the DPC meeting was held. The applicant was neither under suspension nor any chargesheet was issued against him and no disciplinary proceeding was pending. There was no criminal charge pending against the applicant. In that view of the matter the respondent authority was not justified in withholding his promotion and keeping it in sealed cover.

5. In view of our findings above, the impugned order F.No.TDS/4/Vig/Con/CT/90-91/Pt-III/DJP/2231 dated 7.3.1997 passed by the Commissioner of Income Tax, N.E. Region, Shillong is set aside and quashed and the respondents are directed to give effect to the recommendations of the DPC held on 16, 17 and 21 June 1993 with all consequential benefits as per law.

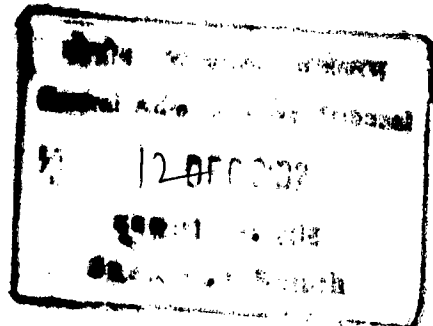
The application is accordingly allowed with cost of Rs.2000/- (Rupees two thousand only).



(R. K. UPADHYAYA)
ADMINISTRATIVE MEMBER



(D. N. CHOWDHURY)
VICE-CHAIRMAN



**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI**

(An application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the Case : **OA No. 396 of 2002**

Dipa Jyoti Paul

Applicants

-Versus-

Union of India & Ors

Respondents

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For use in Tribunal's Office

Date of filing:

Registration No.

REGISTRAR

Filed by the Applicant
through the Advocate
Shunrayashan B
12/12/02

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI**

O.A. No... 296... of 2002

BETWEEN

Dipa Jyoti Paul,

Retired Income Tax Officer,
Resident of Ward-II, Silchar, PO Silchar,
District Cachar.

..Applicant

-AND-

1. Union of India,
through the Secretary,
Department of Revenue,
Ministry of Finance,
Government of India,
New Delhi.
2. The Commissioner of Income Tax,
Shillong- 793 001.
3. The Chairman,
Central Board of Direct Taxes,
Ministry of Finance, North Block,
New Delhi.

.. Respondents

DETAILS OF APPLICATION

- 1. PARTICULARS OF THE ORDER AGAINST WHICH THE
APPLICATION IS MADE :**

29/1


The application is directed against the Order F.No. TDS/4/Vig/Con/CT/90-91/Pt-III/DJP/2231 dated 7.3.1997 passed by the Commissioner of Income-tax, NE Region, Shillong (Respondent No.2) imposing upon the applicant the penalty of "Censure". Consequently applicant also seeks notional promotion to the post of Assistant Commissioner of Income-tax retrospectively with effect from the date his immediate junior was given such promotion and recalculation of his retrial benefits and payment of the same consequent to his notional promotion.

2. JURISDICTION OF THE TRIBUNAL:

The applicant declares that the subject matter of the application is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION :

The applicant further declares that application is filed within the limitation period prescribed under Section 21 of the Administrative Tribunal Act, 1985. The present application has a chequered history of litigation and the order impugned in the instant application was a subject matter of challenge in OA No.169/98, which was disposed of by the order of this Hon'ble Tribunal dated 26.8.98 directing the disposal of the statutory appeal of the applicant. When the statutory appeal of the applicant was not disposed of within the stipulated period by the appellate authority, the applicant filed a Review Application No.5/2001 before this Hon'ble Tribunal which was disposed of vide order dated 11.10.2001 with a direction to dispose of the representation of the applicant within three weeks from the date of receipt of the order. The Hon'ble Tribunal left it open to the applicant to approach this Hon'ble Tribunal again if he is aggrieved by the order passed by the appellate authority. Since no order till this very date has



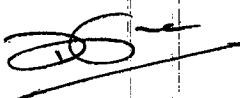
been passed by the appellate authority the applicant is approaching this Hon'ble Tribunal through the present application. In the facts of the present case it is stated that the wrong committed by the respondents is a continuous wrong and as such the present application is not barred by the statutory period of limitation prescribed by the Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE :

4.1 That the applicant is a retired Income-tax Officer. He served as an Income-tax Officer in Group-B service since 24.1.83 and retired from service on superannuation with effect from 1.4.97(FN). Presently the applicant is a resident of Silchar, District Cachar.

4.2. That when the applicant was functioning as Income-tax Officer, Ward, Silchar under the charge of the Commissioner of Income-tax, NE Region, Shillong during the year 1989, certain events took place which subsequently culminated in issuance of Memorandum dated 22.7.93 framing 4 different articles of charges against the applicant proposing to initiate enquiry against him for major penalty under Rule 14 of the CCS(CCA) Rules, 1965.

The subject matter of the memorandum and charges framed therein arose from a fraud involving refund of alleged Tax Deducted at Source(TDS) articulated by an employee of the State of Manipur. The Income tax returns submitted by the alleged culprit at the Income tax Ward, Silchar were accepted and refund were sanctioned on the basis of TDS certificates and the Scheduled Tribe certificates enclosed with the return. The allegation against the applicant was that he issued a refund order without verifying the genuineness of the TDS certificates and Scheduled



Tribe Certificates. It is pertinent to mention that the refund orders were issued by the applicant under Section 143(1) of the Income-tax Act, 1961 applicable for Summary Assessment Scheme. It is also noteworthy that the thrust of various circulars/notices/clarifications issued till then by the Department with regard to the above mentioned Section for Summary Assessment Scheme was speedy disposal of such cases. The applicant as Assessing Officer was given the impression that only arithmetical errors were to be rectified. No other check was warranted. Even where apparent losses to the Government were noticed subsequent to assessment no remedial measures were required to be taken. The copy of the memorandum dated 22.7.93 was received by the applicant on 10.8.93.

A copy of the Memorandum dated 22.7.93 alongwith statement of allegations, list of documents and witnesses is annexed herewith and marked as **ANNEXURE-A/1.**

4.3. That the applicant submitted his written statement of defence dated 17.8.93 wherein he denied the charges made against him. The applicant craves leave of this Hon'ble Tribunal to refer to the explanation furnished by him in his written statement of defence at the time of hearing of this case.

A copy of the written statement of defence dated 17.8.93 is annexed as **ANNEXURE-A/2.**

4.4. That subsequently the Inquiry Officer was appointed and the inquiry against the applicant was conducted under Rule 14 of CCS (CCA) Rules, 1965.



4.5. That after the conclusion of the enquiry the memorandum dated 16th December, 1996 was served upon the applicant by the Commissioner of Income Tax, NE Region, Shillong (Disciplinary Authority)(Respondent No.2). Pursuant to the aforesaid Memorandum the applicant was asked to show cause why a minor penalty should not be imposed against him on the basis of the report of the Inquiry Officer. The applicant was called upon to submit his explanation within 15 days on the receipt of the memorandum. Along with the Memorandum dated 16th December, 1996 a copy of the Enquiry Report dated 30.10.95 was also enclosed.

A copy of the Memorandum dated 16th December, 1996 is annexed as ANNEXURE-A/3.

4.6. That perusal of the inquiry report dated 30.10.95 showed that the Inquiry Officer did not find the applicant guilty of any gross irregularity or negligence in the discharge of his official duties. In his finding the Inquiry Officer took note of the various circulars, notices and clarifications which were issued by the department with regard to Summary Assessment Scheme. It was noted by the Inquiry Officer that these instructions emphasised speedy disposal of such cases and the Assessing Officers were given the impression that only arithmetical errors were to be rectified and no other check was warranted. It was also noticed by the Inquiry Officer that as per these instructions even where apparent losses to the Government were noticed subsequent to assessment, no remedial measures were required to be taken. The Inquiry Officer mentioned in his finding an instance of Rs.2.34 lacs being condoned by the department and this was cited as clarification/ guidance. It was further observed by the Inquiry Officer that the alleged irregularity on the part of the applicant was to be considered in the

background of these executive instructions and circulars of the department. It was held by the Inquiry Officer that there was no apparent aberration in the TDS Certificate. However, it was observed by the Inquiry Officer that as a matter of abundant caution the applicant ought to have enquired about the contract work and payment of tax at source and the receipt of certificate for the same. According to the Inquiry officer, the applicant had option before him and he failed to exercise his option. However, such failure cannot be said to be in contravention of any rules/directions/ clarification in force at the relevant time. It was also noted by the Inquiry Officer that the applicant had discussed the matter with the Assistant Commissioner of Income tax and even he also did not suggest for any enquiry or verification.

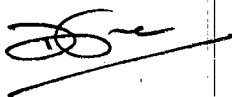
A copy of the Inquiry Report dated 30.10.95 is annexed as

ANNEXURE-A/4.

4.7. That on receipt of the inquiry report the applicant submitted his representation dated 2.1.97 wherein he explained his position in detail in response to the Memorandum dated 16th December, 1996.

A copy of the representation dated 2.1.97 submitted by the applicant is annexed herewith as **ANNEXURE-A/5.**

4.8. That however by the impugned order dated 7.3.97 passed under Rule 15 of the CCS(CCA) Rules, 1965 the Disciplinary Authority(Respondent No.2) imposed upon the petitioner the penalty of "Censure". In the order imposing penalty it was stated by the Disciplinary Authority that the applicant "could have been more careful" in checking the accuracy of the Scheduled Tribe Certificate issued by the Magistrate. It



was in this view of the matter that the Disciplinary Authority found fault with the applicant and imposed upon him minor penalty of "Censure" as specified in clause (i) of Rule 11 of the CCS(CCA) Rules, 1965.

A copy of the order dated 7.3.97 imposing penalty is annexed herewith as **ANNEXURE-A/6.**

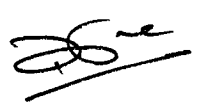
4.9. That being aggrieved by the impugned order imposing penalty dated 7.3.97, the applicant preferred an appeal dated 31.3.97 under Rule 23 of the CCS (CCA) Rules, 1965 to the Hon'ble President of India.

A copy of the appeal dated 31.3.97 is annexed herewith as **ANNEXURE-A/7.**

4.10. That even after lapse of long time when the statutory appeal of the applicant was not disposed of, the applicant preferred OA No.169/98 before this Hon'ble Tribunal assailing the legality of the order of the Disciplinary Authority. This Hon'ble Tribunal vide its order dated 26.8.98 disposed of the OA No.169/98 with a direction that the statutory appeal filed by the applicant should be disposed of as expeditiously as possible and at any rate within a period of two months from the date of receipt of the order.

A copy of the order dated 26.8.98 passed in OA No.169/98 is annexed herewith as **ANNEXURE-A/8.**

4.11. That it is pertinent to mention that alongwith OA No.169/98 the applicant had also preferred OA No.168/98 before this Hon'ble Tribunal wherein he had made a prayer for his promotion to the



post of Assistant Commissioner of Income-tax with consequential benefit. In view of the order passed in OA No.169/98 this OA was disposed of with liberty to the applicant to approach this Hon'ble Tribunal, if he is still aggrieved after the disposal of the appeal.

A copy of the order dated 26.8.98 passed in OA No.168/98 is annexed herewith as **ANNEXURE-A/9.**

4.12. That however, even after the order of this Hon'ble Tribunal dated 26.8.98 passed in OA No.169/98 there was no disposal of the statutory appeal of the applicant. Hence the applicant being left with no other alternative preferred a Review Application No.5/01 before this Hon'ble Tribunal.

Copy of the Review Application No.5/01 is annexed as **ANNEXURE-A/10.**

4.13. That the Review application of the applicant was disposed by this Hon'ble Tribunal vide order dated 11.10.01 wherein it was noted by the Hon'ble Tribunal that the representation of the applicant was transmitted by the Ministry of Law and Justice and Company Affairs to the Chairman of the Central Board of Direct Taxes, Department of Revenue for appropriate necessary action. In this view of the matter the Hon'ble Tribunal directed the Chairman of the Central Board of Direct Taxes, Department of Revenue to dispose of the representation of the applicant, which was forwarded by the Ministry of Law and Justice, Company Affairs, vide F.No.A60011/21/99-Amn/I(LA) dated 29.8.2000 within three weeks from the receipt of the order. The Hon'ble Tribunal also left it open for the applicant to approach this Tribunal if he is still aggrieved by the order passed by the Chairman, Central Board of Direct Taxes.

A copy of the order dated 11.10.01 passed in Review Application No.5/01 is annexed herewith and marked as **ANNEXURE-A/11.**

4.14. That the applicant came within the zone of consideration for promotion to the post of Assistant Commissioner of Income Tax in the year 1993. The Departmental Promotion Committee met in April/May 1993. Even though at the relevant period of time the disciplinary proceeding against the petitioner was not pending but the sealed cover procedure was adopted in his case. It is pertinent to mention that the immediate junior of the applicant Shri MN Das, whose name was shown at serial No.176 of the All India Seniority List of Income-tax Officer as on 1.11.1992 was given promotion to the post of Assistant Commissioner of Income tax pursuant to the recommendation of the DPC, which met in April/May 1993. The aforesaid Shri MN Das was promoted to the post of Assistant Commissioner of Income-tax on 24.6.1993. The applicant has reason to believe that he was not given promotion to the post of Assistant Commissioner of Income-tax because of pendency of the Disciplinary proceeding against him. It is noteworthy that the Disciplinary proceeding against the applicant was concluded with the imposition of the penalty of "Censure" vide order dated 7.3.1997. The applicant was superannuated on 1.4.1997. Hence the applicant was deprived of his promotion to the post of Assistant Commissioner of Income-tax, which he was otherwise entitled to with effect from 24.6.93 i.e. the date on which his immediately junior Shri MN Das promoted to the post of Assistant Commissioner of Income-tax. In this connection, it is pertinent to mention that in the All India Seniority List of Income-tax Officers as on 1.11.92 the name of the applicant was shown at serial No.175 i.e. above than that of Shri MN Das.



Relevant portion of the All India Seniority List of Income-tax Officer as on 1.11.92 is annexed as **ANNEXURE-A/ 12.**

4.15. That the facts of the present case ~~are~~ substantially similar to the facts of OA No.1 /2000 and OA 2/2000(SK Mazumdar -Vs- Union of India and others) which was allowed by this Hon'ble Tribunal vide its order dated 20th February, 2001. Applicant ~~craves~~ leave of this Hon'ble Tribunal to place reliance on its order 20th February, 2001 passed in the aforesaid Original Applications.

4.16. That the applicant of the aforesaid original application, viz. OA 1/2000 and OA No.2/2000 after disposal of these applications in his favour had filed an OA No. 383/2001 seeking promotion to the post of Assistant Commissioner of Income-tax, which was denied to him on account of pendency of disciplinary proceedings against him. It is noteworthy that the applicant of this case i.e. Shri SK Mazumdar was also imposed with the penalty of "Censure" like that of the present applicant. Shri SK Mazumdar, in his application showed the arbitrary behaviour of the official respondents by giving an example of another Income-tax Officer, viz. Shri KN Hazarika, who despite having been imposed with the penalty of "Censure" was given promotion to the post of Assistant Commissioner of Income Tax. Curiously, the official respondents in their written statement filed in the aforesaid case justified the promotion of Shri KN Hazarika, despite imposition of penalty of "Censure" on the ground that -

"That unlike as mentioned in para 4(xxii) the respondents would like to state that in the case of Shri KN Hazarika, he accepted the penalty of 'Censure' without contest and he was promoted to the cadre of Asstt. Commissioner of Income tax only after expiry of currency period of the penalty

imposed on him. His case was also ~~low~~ from vigilance angle. However, the case of the applicant could not be considered for want of vigilance clearance."

This Hon'ble Tribunal took an adverse view of the aforesaid observations in its order dated 31.5.2002 passed in OA No.383/2001. It is pertinent to mention that both Shri SK Mazumdar and Shri KN Hazarika are much junior to the present applicant. The name of Shri SK Mazumdar can be seen at serialNo.545 and that of Shri KN Hazarika at serial at 584 of the All India Seniority List of Income-tax Officer as on 1.11.92.

4.17. That it is therefore apparent that the applicant was denied the promotion to the post of Assistant Commissioner of Income-tax due to the pendency of the departmental proceeding against him. The favour shown to Shri KN Hazarika by the official respondents makes it clear that despite the penalty of "Censure" the applicant could have been notionally promoted to the post of ACIT after his superannuation had he not assailed the legality of the order of imposition of penalty. Be that as it may, facts and circumstances surrounding the case clearly demonstrate that the official respondents have acted arbitrarily and whimsically in the matter of granting promotion.

4.18. That after the order of this Hon'ble Tribunal dated 11.10.01 passed in Review ApplicationNo.5/2001, the applicant waited for long in the hope that the official respondents would act in compliance with the order of this Hon'ble Tribunal. Having waited for long, the applicant now believes that no fruitful purpose would be served in waiting any longer. Since, this Hon'ble Tribunal in its order dated 11.2.201 had left it open for this applicant to approach this Hon'ble Tribunal in the event of non

redressal of his grievances, therefore, the applicant now has come before this Hon'ble Tribunal for the ends of justice.

4.19. That the applicant files this application bonafide for securing ends of justice.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS:

5.1 Because in the present case the applicant was discharging his statutory duty in quasi judicial capacity. While discharging quasi judicial function the applicant at best might have made an error which could at best be an error of law and such error was subject to correction in the appellate forum and as such the impugned order of the Disciplinary Authority is liable to be quashed and set aside.

5.2. Because the applicant was only discharging his duty as an Assessing Officer in conducting assessment. The assessment was under Section 143(1) of the Income-tax Act. The authority all through out impressed upon the Assessing Officer for expeditious disposal of the income tax assessment with minimal checking or no checking at all. Instruction No. 1617 dated 18.5.85 and the Manual of the Office procedure issued by the Director of Inspection and further instructions issued on 26.8.87 and 3.1.90 unequivocally demonstrate that the applicant acted within the parameters laid down by the Standing Orders and Executive Instructions. Any inadvertent act of omission or commission within the aforesaid parameters cannot be treated to be an act of misconduct and as such the impugned order of imposition of penalty is illegal and is liable to be set aside and quashed.

5.3. Because the Inquiry Officer in his conclusion had specifically stated that the charge of committing gross irregularity and negligence in

discharging his official duty has not been substantiated. In view of the aforesaid finding of the Inquiry Officer no penalty could have been imposed upon the applicant.

5.4. Because the order of disciplinary Authority has stated that the applicant could have been more careful in checking the accuracy of Tribal Certificate issued by the Magistrate or possibly authenticated copy of the certificate could have been insisted upon. It is on this account that the applicant was imposed with the penalty of "censure". It is submitted that the observation of the Disciplinary Authority that the applicant could have been more careful is subjective, which is not based on objective consideration of material facts. The degree of care may vary from one individual to another. Mere error of judgment about the degree of care required to be taken in a given assessment case, cannot be treated to be a failure in being careful. Moreover, failure in being extra careful is not a misconduct. Hence in the facts and circumstances of the case, no penalty could have been imposed upon the applicant.

5.5. Because there is no evidence available on record that shows that the applicant erred in exercising his powers in quasi judicial capacity. Bonafide of the applicant in discharging his duties has not been doubted. There is no evidence even to remotely suggest that the applicant acted on extraneous consideration or there was any corrupt motive on his part in discharging his statutory duties, and as such, the impugned order of imposition of penalty is liable to be quashed and set aside.


5.6. Because the materials available on record show that the applicant was fairly diligent and sincere in discharging his statutory duties carefully. In the absence of any material showing deliberate lack of sincerity on the part of the applicant, it is neither fair nor proper to hold

that the applicant could have been more careful in checking the case. It is also difficult to assess as to what could have been the degree of care required for the purpose of discharging the statutory powers in the facts and circumstances of the present case. Hence, in the instant case, the imposition of penalty of "Censure" is wholly unjustified and the same is liable to be set aside and quashed.

5.7 Because under the Scheme of Rule 11 of CCS(CCA) Rules, 1965 the penalty can only be imposed for good and sufficient reason. It is submitted that there is no evidence available on record which constitute good and sufficient reason for imposition of penalty of "Censure" against the applicant. The finding of the Disciplinary Authority which is contrary to the aforesaid, is perverse being based on no evidence.

5.8. Because failure to take extra care or being more careful does not constitute good and sufficient reason within the meaning of expression under Rule 11 of the CCS(CCA) Rules, 1965 justifying imposition of penalty specified in Rule 11 (i) of the Rules.

5.9. Because the facts and circumstances of the instant case are squarely covered by the order of this Hon'ble Tribunal dated 20.2.2001 passed in OA No.1/2000 and OA No.2/2000(SK Mazumdar -Vs- Union of India & Ors) read with order dated 31.5.2002 passed in OA No.383/2001 (SK Mazumdar -Vs- Union of India and others). Hence the applicant is entitled to be given the similar benefit like that of Shri SK Mazumdar.



6. DETAILS OF REMEDIES EXHAUSTED :

That the applicant states that in the facts and circumstances of the case, the applicant has no other alternative efficacious remedy except approaching this Hon'ble Tribunal.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT:

The applicant further declares that he has not filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any Court, Authority or any other Bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT FOR:

8.1. Quash and set aside the Order F No.TDS/4/Vig/Con/CT/90-91/Pt.III/DJP/2231 dated 07.03.97 passed by the Commissioner of Income-tax, N.E. Region, Shillong.

8.2. Direct the Respondents to open the Sealed Cover and on the basis of recommendation of the Departmental Promotion Committee of April/May 1993 give notional promotion to the applicant to the post of Assistant Commissioner of Income-tax retrospectively with effect from 24.6.1993 that is the date on which his immediate junior Shri MN Das was given such promotion.

7.3.97

Done

8.3. Consequent to the prayer made above be further pleased to direct the respondents to re-calculate the retrial benefits of the applicant in terms of the notional promotion given to him and to pay the same within the reasonable period.

8.4. Pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

8.5. Cost of the application.

9. INTERIM ORDER PRAYED FOR:

In the facts and circumstances of the case, the applicant does not pray for an interim order.

10. The application is filed through Advocate.

11. PARTICULARS OF THE IPO:

- (I) IPO No. 7G 606907
- (II) Date: 11/12/02
- (III) Payable at : Guwahati

12. LIST OF ENCLOSURES:

As stated in the Index.

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VERIFICATION

I, Dipa Jyoti Paul, Son of Late Debendra Kr Paul aged about 63 years, resident of Silchar, District Cachar, Assam, do hereby solemnly affirm and verify that the statements made in the accompanying application in paragraphs 4.1, 4.4., 4.12, 4.17, 4.18, 4.19 are true to my knowledge, those made in paragraphs 4.2, 4.3, 4.5 to 4.11, 4.13, 4.14, 4.15, 4.16 being matters of records are true to my information derived therefrom and the rest grounds urged are as per legal advice. I have not suppressed any material fact.

And I sign this verification on this the day of December, 2002
at Guwahati.

Dipa Jyoti Paul
Signature of the applicant.

ANNEXURE- A/1STANDARD FORM OF CHARGE SHEET FOR MAJOR PENALTIES
(Rule 14 of CCS (CCA) Rules)

No.TDS/4/Vig/Con/CT/90-91/Pt.III/DJP/557

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
OFFICE OF THE COMMISSIONER OF INCOME TAX
NORTH EASTERN REGION, SHILLONG-793 001

Dated 22-7-93

MEMORANDUM

The undersigned proposes to hold an inquiry against Shri Dipa Jyoti Paul under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure-II). A list of documents by which, and a list of witness by whom, the articles of charge are proposed to be sustained are also enclosed.

(Annexures III and IV).

2. Shri Dipa Jyoti Paul is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

3. He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.

4. Shri Dipa Jyoti Paul is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the inquiring authority or otherwise fails or refused to comply with the provisions of Rule 14 of the CCS(CCA) Rules, 1965 or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him ex- parte.

*Certified to be true copy**Jhunjharayastha*
12/12/02
Advocate.

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5. Attention of Shri Dipa Jyoti Paul is invited to Rule 20 of the Central Civil Services(Conduct)Rules, 1964, under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Shri Dipa Jyoti Paul is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS(Conduct)Rules, 1964.

6. The receipt of the Memorandum may be acknowledge.

(By order and in the name of the President)

Sd/- D AGARWALA

Name and designation of Competent Authority
Commissioner of Income Tax, NER.
SHILLONG

To
Shri Dipa Jyoti Paul,
Income-tax Officer,
Internal Audit,
Shillong, Now ITO Ward-2, Silchar.

ANNEXURE-I

STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST
SHRI DIPAJYOTI PAUL, INCOME TAX OFFICER, WARD, SILCHAR (NOW ITO,
INTERNAL AUDIT, SHILLONG)**ARTICLE-I**

That the said Shri Dipa Jyoti Paul while functioning as an Income Tax Officer, Ward, Silchar under the charge of the Commissioner of Income-tax, North Eastern Region, Shillong during the year 1980 entertained returns of income alongwith statements of accounts and forged and fake Tax Deduction at Source (TDS) Certificates submitted in the name of non existent and fictitious persons, processed the said returns and issued refunds to the tune of Rs.6,25,271/- without verifying the genuineness of the TDS Certificates causing wrongful loss to the Government and has, therefore, committed gross irregularity and negligence in the discharge of his official duties violating the provisions of Rules 3(1)(i) and 3(1)(ii) of the CCS(Conduct)Rules, 1964.

ARTICLE - II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri DJ Paul has accepted unattested photo copies of the Tribal Certificates purported to have been issued by the Chief Judicial Magistrate, Haflong, NC Hills, Assam whereas the Chief Judicial Magistrate is not the competent authority for issuing such Tribal Certificates. Shri DJ Paul was, therefore, careless in the discharge of his official duties and has violated the provisions of Rules 3(1)(i) and 3(1)(ii) of the CCS(Conduct)Rules, 1964.

ARTICLE -III

That during the aforesaid period and while functioning in the aforesaid office, the said Shri DJ Paul has issued refund orders without verifying the fact of credit of the 2% tax deducted at source to the

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Government accounts and has, therefore, committed gross irregularity and negligence in the discharge of his official duties contravening the provisions of Rules 3(1)(i) and 3(1)(ii) of the CCS (Conduct) Rules, 1964.

ARTICLE -IV

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Dipa Jyoti Paul has passed refund orders in undue haste with a obvious motive to favour the assesseees, concerned and has, therefore, not maintained absolute integrity and impartiality as laid down in Rule 3(1)(i) to the CCS(Conduct)Rules, 1964.

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Annexure-II

STATEMENT OF IMPUTATION OF MISCONDUCT OF MISBEHAVIOUR IN SUPPORT OF THE ARTICLES OF CHARGE FRAMED AGAINST SHRI DIPAJYOTI PAUL, INCOME TAX OFFICER, WARD, SILCHAR (NOW ITO, INTERNAL LAUDIT, SHILLONG).

ARTICLE-I

During the year 1989 8(eight) nos. of income tax return in the names of (1) Shri Haokholeim Simte, (2) Shri Thingphunga Salang (3) Shri Heilin Lampuia, (4) Shri Chungthei Saxena, (5) Shri Haokholet Haokip, (6) Shri Heiling Thinpao, (7) Shri Moungethei Intipa and (8) Shri Chungthui Dongel were filed in the office of the income tax Officer, Ward, Silchar claiming refund of TDS. The above mentioned 8(eight) income tax returns were accompanied by 92 nos. of TDS certificates purported to have been issued by (1) the Commandant (Eng.), Engineering Cell, Assam Rifles, NE Range, Shillong and (2) Executive Engineer, Telecom Civil Division, NE Circle, Shillong alongwith Tribal Certificates purported to have been issued by the Chief Judicial Magistrate, Haflong, NC Hills, Assam.

The TDS certificates show that the total volume of work executed in both the departments i.e. Assam Rifles and Telecom, Shillong came around Rs. 1,70,58,784/- + Rs. 2,47,85,356/- totalling Rs. 4,17,44,140/- for the financial year 1987-88. Moreover, the TDS certificates show the contract work for the period 1986 whereas deduction of tax at source started for the period 1987. Had Shri DJ Paul, ITO been cautious enough to apply in mind to the enormousness of the contract work and the apparent discrepancy as visible in the TDS certificates he should have discreetly enquired from the departments concerned the fact and genuineness of the case.

The TDS certificates purported to have been issued by (1) the Commandant (Engg), Engineering Cell, Assam Rifles, NE Range, Shillong and (2) the Executive Engineer, Telecom Civil Division, NE Circle, Shillong were forged and fake as no such TDS Certificate ever issued by the said departments and there is no authority designated as such to issue TDS certificates in the said departments. The names and addresses of the assesses mentioned in the income tax returns were also found to be non-existent and fictitious.

Shri DJ Paul, ITO processed the said returns and issued refund orders to the tune of Rs.6,25,271/- on the strength of the said false TDS certificates without verifying the genuineness of the TDS certificates causing wrongful loss to the Government.

Shri DJ Paul, ITO has, therefore, committed gross irregularity and negligence in the discharge of his official duties and has violated the provisions of Rules 3(1)(i) and 3(1)(ii) of the CCS(Conduct)Rules, 1964.

ARTICLE -II

The said returns of income were accompanied by unattested photocopies of Tribal Certificates purported to have been issued by the Chief Judicial Magistrate, Haflong, NC Hills, Assam. The Chief Judicial Magistrate is not the competent authority to issue such Tribal Certificates. In the NC Hills District, and as a matter of fact, the competent authorities for issuing Tribal Certificates are the District Magistrate and the SDM. There is also no such establishment as CJM in Haflong. The Tribal Certificates were false. On the basis of the above said unattested photocopies of Tribal Certificates refunds to the tune of Rs.6,25,271/- were issued by Shri DJ Paul, ITO and thereby causing loss to the Government.

Shri DJ Paul, ITO was careless and not cautious enough to notice such false certificates and has, therefore, failed in the discharge of his official duties and has violated the provisions of Rule 3(1)(i) and 3(1)(ii) of the CCS (Conduct)Rules, 1964.

ARTICLE-III

Shri Dipa Jyoti Paul, ITO, has falsely certified on the counterfoils of the refund vouchers that the tax concerning which the refund was given had been credited to the Govt account inasmuch as no such amount was credited in the Central Government Account. Shri Dipa Jyoti Paul, prior to issue of the said refund orders, should have verified from the relevant statements such as quarterly and /or annual returns in order to satisfy himself about the genuineness of the TDS certificates furnished with the return of income on the basis of which the claims of refunds were considered. Shri Dipa Jyoti Paul has, therefore, committed gross irregularity and negligence in the discharge of his official duties and has violated the provisions of Rules 3(1)(i) and 3(1)(ii) of the CCS (Conduct) Rules, 1964.

ARTICLE -IV

Although the discrepancies as stated above were apparent Shri DJ Paul, ITO has processed the said returns and issued refund vouchers quickly for a total sum of Rs.6,25,271/- in the names of all the said eight numbers of fictitious and non existent assesses in a hasty manner with obvious motive to favour the said assesses.

Shri DJ Paul, ITO has, therefore, not maintained absolute integrity and impartiality as laid down in Rules 3(1)(1) of the CCS(Conduct)Rules, 1964.

ANNEXURE-III

LIST OF DOCUMENTS BY WHICH THE ARTICLES OF CHARGE FRAMED AGAINST SHIR DIPA JYOTI PAUL, INCOME TAX OFFICER, WARD, SILCHAR (NOW ITO, INTERNAL LAUDIT, SHILOONG) ARE PROPOSED TOBE SUSTAINED.

1. Advance of refund of income tax Book No. A 0626688 with serialNo.B/6 268701 to B/6 268800 including B/6 268713 to 17 and 19 to 21 in all foils will prove the advice against refund vouchers.
2. Income refund order Book No.A 062688 and serialNo.B/6 268701 to B/6 268800 including refund order No.B/6 268713 to 17 and 19 to 21 in all foils will prove the refund to all assesses.
3. Assessment record file No.,GIR No.M-1081/PR of Mungthoi Intipa of IT Office, Silchar.
4. Assessment record file GIR No.C-722/PR of Chunthui Dongol of Income Tax Office,Silchar.
5. Assessment record file GIR No.H.-733/PR of Hailin Thingpao of Income Tax Office,Silchar.
6. Assessment record file GIR No.C.-723/PR of Chouthei Sexena of Income Tax Office,Silchar.
7. Assessment record file GIR No.H.-770/PR of Heilin Lanpuia of Income Tax Office,Silchar.
8. Assessment record file GIR No.T.-770/PR of Thingphunga of Income Tax Office, Silchar.
9. Assessment record file GIR No.H-722/PR of Haokholein Simte of Income Tax Office, Silchar.
10. Assessment record file GIR No of Haorkolet Haokip of Income Tax Office, Silchar.

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11. Letter No.VI/25018/90-Eng/93 dt 23.7.90 by NS Brar will prove the non existence of Commandant (Engineering) Engineering Cell, Assam Rifles, North Eastern Range, Shillong
12. Letter No.50(10)82/TCC/SH/Conf. A. 127 dt 9.8.90 by NC Bhowmick will prove the non existence O/O Executive Engineer, NE Circle, Telecom, Civil Divn. Shillong. .
13. One Blank "Form of Caste Certificates" supplied by DC Office, Haflong will prove difference of forms of Tribal Certificate.
14. Letter No.154 dt 20.12.90 issued by Adl. DC Haflong. It will prove the non issuance of Tribal certificate.
15. Memo No.TDS/4/Vig/Con/CT/90-91/58 dt 9.4.92 by BR Purkayastha, ITO, TDS, Shillong. This will prove that the deposits were not made to Central Government Account.

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ANNEXURE-IV ,

LIST OF WITNESSES BY WHOM THE ARTICLES OF CHARGE FRAMED AGAINST SHRI DIPA JYOTI PAUL, INCOME-TAX OFFICER, WARD, SILCHAR (NOW ITO, INTERNAL AUDIT, SHILLONG) ARE PROPOSED TO BE SUSTAINED.

1. Shri D Bhattacharyya, Inspector, CBI, SPE, Silchar Branch.
2. Shri KS Brar, Lt Col. AD (D&P), O/O Director General, Assam Rifles, Shillong. He will prove that no such office named and styled "Commandant (Engg), Engineering Cell, Assam Rifles, NE Range, Shillong is in existence.
3. Shri NC Bhgowmick, Engineering Assistant to Supdtg. Engineer, Telecom Civil Division, Shillong. He will prove the non existence of Executive Engineer, NE Circle, Telecom Civil Division, Shillong.
4. Shri Santosh Kr Choudhury, Postal Assistant, Haflong. He will prove the despatch of the Registered letters and also the non existence of the names of locations mentioned by the Assessee.
5. Shri Jadav Goswami, Head Assistant, DC Office, Haflong. He will prove non existence of areas mentioned in the addresses of the assesses and also non-issuance of Tribal Certificates in the names of the said assesses.

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ANNEXURE-A/2

CONFIDENTIAL

BY SPEED POST

No.Con/Per/DJP/93-94

dated 17-8-93

To

The Commissioner of Income tax,
North Eastern Region,
Shillong-1(Competent Authority).

Sub: Statement of defence against the charge sheet drawn in the
case of Shri DJ Paul, ITO, Submission of.

Sir,

Kindly refer to your office No.TDS/4/Vig/Con/CT/90-
91/Pt.III/DJP/557 dated 22.7.93 which was received by me on 10.8.93
at Silchar.

On going through the memorandum and the annexures 1 to 1V, I have been greatly astonished and very much shocked to learn about the imputations and charges framed against me. In this connection, I may kindly be permitted to state that I all along discharge my duties with utmost sincerity, honesty, devotion and to the best of my ability, I have been following provisions of the IT Act and other Act of Direct Taxes along with Rules prescribed there under and also strictly following the instructions as well as circulars of the Board and the other authorities superior to me. To the best of my knowledge, information and belief, I have never committed any breach or impropriety or misconduct or misbehaviour in discharging my duties as have been imputed against me in the memorandum and its annexures mentioned hereinabove. Since specific violations and negligence have not been mentioned, I may kindly be favoured with the particulars regarding violation of Rules, practices and procedure so as to enable me to submit further explanations if required.

Certified to be true copy

Jhankar Singh

12/12/02

Advocate,

As directed, I am however, furnishing my specific replies i.e. statement of defence against the charges brought against me in the articles of charges seriatim as under :-

ARTICLE -I

As regards entertainment of forged and fake TDS certificates as charged against me, I state that I did not entertain any such TDS certificates knowing them to be forged and fake. At the relevant time, there was no information or material in records to suggest or indicate that the TDS certificates filed with the returns of income by the assesses motioned in Article I of Annexure-II to the Memorandum referred to abode were forged or fake or that these were in the names of non existent and fictitious persons and there was also nothing in the TDFS certificates to provoke any suspicion as to their genuineness. The assessment in these cases being covered by summary assessments scheme and accordingly completed u/s 143(i) of the IT Act, 1961. Under the summary assessment schemes as was in force for the concerned assessment years, there was no scope for any enquiry under that scheme. As regards processing of returns as charged vide Article -I of the Annexure-I, I categorically deny the charges since there was no scope to process the return for the relevant assessment years as per provisions contained in the IT Act, 1961. As per the procedure that was in force for the relevant assessment years, after receipt of returns, normal checking was conducted by the dealing assistant and by Inspector for purpose of Section 139(9) of the IT Act, 1961. So far I believe no scrutiny is attracted in respect of pure refund cases, I therefore, categorically deny the charges brought against me regarding gross irregularity and negligence in the discharge of official duties.

ARTICLE-II

I categorically deny the charge of careless in discharge of official duties by accepting the photo copy of the Tribal Certificate, there was no

circular/instruction regarding the list of competent authority for issuing tribal certificate, and therefore, the certificate purported to have been issued by the Chief Judicial Magistrate was accepted on good faith more so as the names of the assesses indicated that they belonged to Schedule Tribes and prima facie no suspicion arose in my mind regarding correctness of the claim of the assesses under reference.

ARTICLE -III

I categorically deny the charge framed against me regarding gross irregularity and negligence of issuing refund order without verifying the fact of credit of the 2 tax deducted at source to the Government account. I state that details of credit were reflected in the TDS certificates furnished along with the return and no discrepancy at all came to my notice from the said TDS Certificates as far as I can recollect now. So far my knowledge goes, no procedure or instructions were in force at the relevant time for making any enquiries as to whether the taxes deducted at source were credited to Government account. The statements in the TDS certificates were taken as correct in good faith particularly as there was nothing in them to provoke suspicion. Moreover, the cases being covered by summary Assessment Scheme, there was no scope for any enquiry. The Officers issuing the TDS Certificate as mentioned in the TDS Certificates prima facie appeared to be outside my territorial jurisdiction and therefore no return regarding the tax deducted at source were expected to be filed by them in my office and hence there was also no scope for verification of the facts of tax credit with reference to any such return/ challan etc. These being pure refund cases the assessments had to be completed promptly keeping in view of the standing instructions of the Board in this regard. From the above facts it may kindly be seen that there was no gross irregularities or negligence in this regard on my part.

ARTICLE -IV

I categorically deny the charge framed against me that I passed refund orders in undue haste with obvious motive to favour the assesses concerned and that I did not maintain absolute integrity and impartiality. In this connection, I state that I strictly followed the instructions/circulars issued by the Board from time to time for expeditious disposal of refund applications and prompt despatch of Refund Vouchers vide Board's instruction No.1647 dated 11.9.85. As regards completion of assessment u/s 143(1), I strictly followed the Board's instruction No.1617 dated 18.5.85 and No.1645 dated 16.8.85 for expeditious disposal of IT Assessment u/s 143(1). As regards charge of haste with obvious motive, I categorically deny the charge on the basis of facts stated hereinabove. Moreover, I state that the cases under reference were pure refund claims from the Tribal people of Haflong who got no taxable income as per their statements filed along with the return. All the claimants came in a group and were making noise in the office premises for prompt disposal of their cases and it was decided after consultation with Mr Kaisang, the then ACIT, Circle Silchar to give top priority in disposing their refund cases and to wash off the evil and possible breach of peace in the office so that better public relations could be maintained.

From the facts and circumstances, it may kindly be seen that there was no undue haste on my part and there could be no question of any motive to favour the assesses concerned in passing the refund orders.

Since I have submitted my statement of defence briefly as above, I desire to be heard personally.

Yours faithfully
Sd-/ DJ Paul,
Income tax Officer,
Ward-2, Silchar.

ANNEXURE-A/3

TDS/4/Vig/Con/CT/90-91/Pt.III/DJP/1784

OFFICE OF THE COMMISSIONER OF INCOME TAX
NORTH EASTERN REGION, POST BOX 20
SHILOONG-793 001, MEGHALAYA.

Dated 16th December, 1996

Subject: Inquiry report on Departmental Inquiry
against Shri DJ Paul, ITO, Ward-2, Shillong.

MEMORANDUM

Shri DJ Paul, ITO, Ward-2, Silchar is hereby informed that the Inquiry report on the departmental inquiry against him has been received, a copy of which is enclosed, and on the advice of the CVC it is proposed to impose minor penalty against him.

2. Shri DJ Paul, ITO, Ward-2, Silchar is hereby given opportunity to show cause why a minor penalty should not be imposed against him on the basis of the IO's report.

3. If Shri DJ Paul, ITO, Ward-2, Silchar fails to submit his compliance within 15 days of the receipt of this Memorandum it will be presumed that he has nothing to say and order will be liable to be passed against Shri DJ Paul, ITO, Ward-2, Silchar ex parte.

4. The receipt of this Memorandum should be acknowledged by Shri DJ Paul, ITO, Ward-2, Silchar.

Sd/- V Tochhawng
Commissioner of Income Tax,
North Eastern Region, Shillong,
Disciplinary Authority.

Encl: As stated
To
Shri DJ Paul,
Income Tax Officer,
Silchar.

Certified to be true copy
Jpurkayastha
12/12/01
Achiro cali

No.25/FMR/131/CDI/CVC
Government of India
Central Vigilance Commission

Block 10, Jamnagar House,
Akbar Road, New Delhi-11.
Dated: 30-10-95

Subject: Departmental inquiry against Shri
D.J. Paul, Income Tax Officer, formerly
at Income Tax Ward, Silchar.

REPORT OF THE INQUIRY OFFICER

I. THE PROCEEDINGS

The Ministry of Finance (Income Tax Deptt.) initiated disciplinary proceedings under Rule 14 of the Central Civil Services (Classification, Control and appeal) Rules, 1965 against three of their officers as mentioned below:

| Sr.No. | Name and designation of the Charged Officer | Disciplinary Authority | Order appointing the Inquiry Officer (IO) and Presenting Officer (PO) |
|--------|--|---|--|
| 1. | Shri D.J. Paul Income Tax Officer Ward, Silchar | Commissioner of Income-tax, North Eastern Region, Shillong. | No.TDs/4/Vig./ Con./CT/90-91/ Pt.III/DJP/ 976-979 dt. Sept. 7/19, 1994/ and dt. 21-4-95 |
| 2. | Shri P.K. Choudhury Income Tax Inspector Ward, Silchar | - do - | No. TDS/4/Vig. Con/CT/90-91/ Pt.IV/PKC/ 1403-06 dt. 3-1-95/ and No.982 987 - dt. 7-6-95 |
| 3. | Shri I.U. Choudhury UDC. Ward, Silchar | - do - | No. TDS/4/Vig. Con/CT/90-91/ |

Certified to be true copy

Jhulrayashā
12/12/02
Advocate

I was appointed as Inquiry Officer(IO) and Shri N.M. Singh, DSP, CBI, SPE, Silchar was appointed as Presenting Officer(PO) in all these cases in the orders cited above.

Simultaneous but separate proceedings have been held in respect of the above mentioned officers.

2. Shri Dipa Jyoti Paul(Paul henceforth) was functioning as Income Tax Officer, and S/Shri P.K. Choudhury and I.U. Choudhury were working as Income Tax Inspector and UDC respectively under Shri Paul in Income Tax Ward, Silchar at the relevant time i.e. during the year 1989.

3. The allegations which are the subject matter of these inquiries, proceedings against these officers relate to their improper processing of returns of income accompanied by statements of accounts and forged and fake tax deductions at source(TDS Certificates) etc. which resulted in refunds to the tune of Rs. 6,25,271/- in the names of persons, found later to be fictitious and non-existent.

4. The Preliminary Hearing(PH) in case of shri D.J. Paul was held on 27-3-95 and the PHs in the cases of S/Shri P.K. Choudhury and I.U. Choudhury were held on 12-7-95. After inspection of the documents by the Charged Officers, the regular hearings in these cases were held on 16-8-95, 17-8-95 and 18-8-95 in the Office of the Commissioner, Income Tax, North-Eastern Region. at Shillong.

THE CASE AGAINST SHRI D.J. PAUL - IN DETAILS

5. The department cited 15 documents and 5 witnesses in support of the charge in the Annexure III and IV to the charge memo. However, during the regular hearing, the PO could not produce one document cited which is at sr. no. 13 of the Annexure III to the charge memo. Thus, 14 documents were taken on record and marked as Exhibit S-1 - S-14. The PO dropped two witnesses, namely, Shri D. Bhattacharjee who investigated the case as Inspector, CBI and Head Assistant, D.C. Office, Haflong. The witness mentioned at sr. no. 2 was substituted. One witness was added at the RH. Thus, 4 witnesses were examined. Copies of their depositions were given to the PO and CO.
6. Shri Paul submitted his statement of defence. During the regular hearing, he introduced 13 defence documents. These documents were taken on record and marked as Exhibit D-1 to D-13. The Charged Officer cited four defence witnesses. They were examined and copies of their depositions were given to the PO and CO.
7. Shri Adhir Ranjan Chakraborty, Retd. Assistant Commissioner of Income-tax, assisted the CO as his defence assistant.
8. Shri Paul was generally examined by the Inquiry Officer. A copy of his replies was given to the PO and the CO.
9. The PO submitted his written brief dt. 24-8-95 and the CO submitted his written brief dt. 28-8-95.

II. ARTICLES OF CHARGE

The statement of articles of charge against Shri

D.J. Paul are reproduced below:-

ARTICLE - I

10. That the said shri Dipa Jyoti Paul while functioning as an Income Tax Officer, Ward. Silchar under the charge of the Commissioner of Income-tax, North Eastern Region, Shillong during the year 1989 entertained returns of income alongwith statements of accounts and forged and fake Tax Deduction at Source(TDS) Certificates submitted in the names of non-existent and fictitious persons, processed the said returns and issued refunds to the tune of Rs. 6,25,271/- without verifying the genuineness of the TDS Certificates causing wrongful loss to the Government and has, therefore, committed gross irregularity and negligence in the discharge of his official duties violating the provisions of Rules 3(1) (i) and 3(i)(ii) of the CCS (Conduct) Rules, 1964.

ARTICLE - II

11. That during the aforesaid period and while functioning in the aforesaid office, the said shri D.J. Paul has accepted unattested photo copies of the Tribal Certificates purported to have been issued by the Chief Judicial Magistrate who is not the competent authority for issuing such Tribal Certificates. Shri D.J. Paul was, therefore, careless in the discharge of his official

duties and has violated the provisions of Rules 3(1)(i) and 3(1)(ii) of the CCS(Conduct) Rules, 1964.

ARTICLE-III

12. That during the aforesaid period and while functioning in the aforesaid office, the said Shri D.J. Paul has issued refund orders without verifying the fact of credit of the 2% tax deducted at source to the Govt. accounts and has, therefore, committed gross irregularity and negligence in the discharge of his official duties contravening the provisions of Rules 3(1)(i) and 3(1)(ii) of the CCS (conduct) Rules, 1964.

ARTICLE-IV

13. That during the aforesaid period and while functioning in the aforesaid office, the said Shri Dipa Jyoti Paul has passed refund orders in undue haste with obvious motive to favour the assesseees concerned and has, therefore, not maintained absolute integrity and impartiality as laid down in Rules 3(1)(i) of the CCS(Conduct) Rules, 1964.

III. THE CASE OF THE DISCIPLINARY AUTHORITY

The case of the disciplinary authority as given in the statement of imputations is given below:-

Article-I

14. During the year 1989, 8(eight) nos. of income tax returns in the names of (1) Shri. Haokholeim Simte (2) Shri Thingphunga Salang (3) Shri Heilin Lampuia (4) Shri Chungthi Saxena (5) Shri Haokholet Haokip (6) Shri Heiling Thinpa (7) Shri Moungethi Intipa and (8) Shri Chungthui Dongel were filed in the office of the Income-tax Officer, Ward, Silchar claiming refund of TDS. The above mentioned 8(eight) income-tax returns were accompanied by 92 nos. of TDS Certificates purported to have been issued by (1) the Commandant(Engg.), Engineering Cell, Assam Rifles, N.E. Range, Shillong and (2) Executive Engineer, Telecom Civil Division, N.E. Circle, Shillong alongwith Tribal Certificates purported to have been issued by the Chief Judicial Magistrate, Haflong, N.C. Hills, Assam.

15. The TDS Certificates show that the total volume of work executed in both the departments i.e., Assam Rifles and Telecom, Shillong came around Rs. 1,70,58,784/- + Rs. 2,47,85,356/- totalling Rs. 4,17,44,140/- for the financial year 1987-88. Moreover, the TDS Certificates show the contract work for the period 1986 whereas deduction of tax at source started for the period 1987. Had Shri D.J. Paul, ITO been cautious enough to apply his mind to the enormousness of the contract work and the apparent discrepancy as visible in the TDS certificates he should have discreetly enquired from the departments concerned the fact and genuineness of the cases.

16. The TDS Certificates purported to have been issued by (1) Commandant(Engg.), Engineering Cell, Assam Rifles, N.E.

Range, Shillong and (2) the Executive Engineer, Telecom Civil Division, N.E. Circle, Shillong, were forged, and fake as no such TDS Certificates were even issued by the said departments and there is no authority designated as such to issue TDS Certificates in the said departments. The names and addresses of the assesseees mentioned in the income tax returns were also found to be non-existent and fictitious.

17. Shri D.J. Paul, ITO processed the said returns and issued refund orders to the tune of Rs. 6,25,271/- on the strength of the said false TDS Certificates without verifying the genuineness of the TDS Certificates causing wrongful loss to the Govt.

18. Shri D.J. Paul, ITO has, therefore, committed gross irregularity and negligence in the discharge of his official duties and has violated the provisions of the Rules 3(1) (1) and 3(1) (1) of the CCS (conduct) Rules, 1964.

Article-II

19. The said returns of income were accompanied by unattested photocopies of Tribal Certificates purported to have been issued by the Chief Judicial Magistrate, Haflong, N.C. Hills Assam. The Chief Judicial Magistrate is not the competent authority to issue such Tribal Certificates. In the N.C. Hills District, and as a matter of fact, the competent authorities for issuing Tribal Certificates are the District Magistrate and the SDM. There is also no such establishment as CJM in Haflong. The Tribal Certificates were false. On the basis of the above said unattested photocopies of Tribal Certificates refunds to the tune

of Rs. 6,25,271/- were issued by Shri D.J. Paul, ITO and thereby causing loss to the Government.

20. Shri D.J. Paul, ITO was careless and not cautious enough to notice such false certificates and has, therefore, failed in the discharge of his official duties and has violated the provisions of Rule 3(1)(i) and 3(1)(ii) of the CCS(Conduct) Rules, 1964.

Article-III

21. Shri Dipa Jyoti Paul, ITO, has falsely certified on the counterfoils of the refund vouchers that the tax concerning which the refund was given had been credited to the Govt. account in as much as no such amount was credited in the Central Govt. Account. Shri Dipa Jyoti Paul, prior to issue of the said refund orders, should have verified from the relevant statements such as Quarterly and/or Annual Returns etc. in order to satisfy himself about the genuineness of the TDS Certificates furnished with the return of income on the basis of which the claims of refunds were considered. Shri Dipa Jyoti Paul has, therefore, committed gross irregularity and negligence in the discharge of his official duties and has violated the provisions of Rules 3(1)(i) and 3(1)(ii) of the CCS(Conduct) Rules, 1964.

Article-IV

22. Although the discrepancies as stated above were apparent Shri D.J. Paul, ITO has processed the said returns and issued refund vouchers quickly for a total sum of Rs. 6,25,271/- in the name of all the said eight numbers of fictitious and non-

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existent assesseees in a hasty manner with obvious motive to favour the said assesseees.

Shri D.J. Paul has, therefore not maintained absolute integrity and impartiality as laid down in Rules 3(1) (1) of the CCS(Conduct) Rules, 1964.

IV. ANALYSIS OF THE CASE

The case records including the written briefs from the PO and CO have been examined carefully.

SOME FACTS RELEVANT TO THE CASE

23. The PO has given in his written brief certain information relating to the modus operandi adopted by one Shri Keising James who is considered to be the brain behind the fraudulent embezzlement of government fund. The CO has, however, objected to this in his brief on the ground that these facts were not discussed at the time of regular hearing. But, he himself had referred to the Court cases where Shri James was one of the accused. Shri Paul had also enclosed the orders of the Courts. The facts brought out by the PO as well as the CO are reiterated below without prejudice to the case of either side for proper understanding of the case and appreciation of arguments from both sides. Hence, the PO's account and the CO's references have been relied upon and given below:-

24. Shri Keising James was working as Upper Division Clerk in the office of the Assistant Director of Industry, Poromapate Imphal, Manipur during 1989. Taking undue advantage

of some provisions in the Income Tax Act for refund of Tax Deducted at Source(TDS) to the income tax assesseees belonging to Scheduled Tribes in the North Eastern Region and also certain shortfalls in the practices followed in Summary Assessment Schemes. Shri James submitted income tax returns on fictitious names for refund of TDS along with false TDS Certificates and Scheduled Tribe Community Certificates. He also opened accounts in banks under those fictitious names and got the refund money encashed/ transferred to other places for subsequent encashment.

25. In this particular case, Shri James effected submission of 8 returns for refund of TDS under fictitious names. The returns were accompanied by TDS certificates purportedly issued by the office of Commandant(Engg.), Assam Rifles, Shillong and the office of the Executive Engineer, Telecom Circle, Shillong. The community certificates(photocopies) were allegedly issued by the Chief Judicial Magistrate, N.C. Hills, Haflong. Shri James went to the Income Tax Office with some other persons and pleaded for early issue of refund orders. In the normal course, the registered letters containing refund orders from the office of the Income Tax Officer, Silchar were to be delivered to the addressees in the respective places of address given in the letter. The addressees being fictitious, the post office would have sent them back to the Income Tax Office, Silchar undelivered. From the deposition of the State Witness, namely, Shri Santosh Kumar Choudhury(SW-2) and the defence witnesses, namely Smt. Namita and Shri Sena Sinha(DW-1 and DW-2), it is evident that Shri Keising managed to get the help of other tribal

persons and impressed upon the postal officials as if they were the addressees of the registered letters containing the refund vouchers. Shri Keising got those letters through window delivery at the post office itself. Bank accounts were also opened in the fictitious names at Federal Bank of India Ltd., Silchar and Indian Bank, Silchar from where the TDS vouchers/cheques were got encashed/ transferred for subsequent encashment.

26. The allegations, in brief, against Shri Paul are:-

He did not verify from the authorities concerned whether 2% tax was deducted at source for the credit of Government's account;

He accepted unattested photocopies of tribal certificates purported to have been issued by Chief Judicial Magistrate, Haflong, N.C. Hills, Assam; and

thus processed returns of income with statements of accounts in undue haste which resulted in refund to the tune of Rs. 6,25,271/- causing wrongful loss to the government.

These allegations are examined below.

He did not verify from the authorities concerned whether 2% tax was deducted at source for the credit of Government's account.

27. Photocopies of the assessment record files relating to eight persons are from Ex.S-3 to S-10. Requests for grant of refund for the assessment years 1987-88 and 88-89 appear to have been submitted alongwith the returns of income for these years by persons of the names mentioned in para 1 of the

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statement of imputations. These returns of income with accompanying documents had been acknowledged by the office of the Income Tax Officer, Ward, Silchar. These files contain copies of "certificate of deduction of tax from payment made to contractor or sub-contractor under Section 203 of Income Tax Act 1961". Four of these certificates in the assessment files of four persons, bear the same signature over the description "Executive Engineer, North Eastern Circle, Telecom, Civil Division, Shillong" with the date 31-3-89 at two places i.e. under details of recovery and under the schedule giving date of contract, date of completion, full value of contract; thus giving the impression that these TDS certificates were issued by the office of the Executive Engineer, North Eastern Circle, Telecom, Civil Division, Shillong for the work completed by the purported assessee. Similarly, the four TDS Certificates in the remaining four assessment files bear some other signature over the description "Commandant(Engg.), Assam Rifles, North Eastern Range, Shillong with the date 31-3-89; thus giving the impression that these TDS certificates were issued by the office of the Commandant(Engg.), Assam Rifles, North Eastern Range, Shillong for the work completed by the purported assessee. The certificates in both the cases contain, inter alia, the full value of the contracted works as well as 2% income tax deducted.

28. The FO has submitted the following points in support of the allegation:-

- a. The income returns in dispute were filed for the first time. The CO himself had admitted this. Therefore, the

Assessing Officer was expected to be more cautious in these cases.

There were certain obvious facts and inconsistencies which should have immediately attracted the attention of the CO for close examination of the claims.

The works were stated to have been completed at Shillong. However, the claims were made at Silchar.

The persons were reported to be hailing from Haflong which is quite far away from Silchar.

The official stamp of the officer who was shown to have issued the certificates appeared unnecessarily at the top of the TDS Certificates.

b. The contract work was stated to have been completed for the year 1986 whereas deductions of tax at source started from 1987.

The names of some of the reported assesseees have been differently spelt in the TDS Certificates and the income tax returns applications.

The volume of work stated to have been executed was enormous i.e. for amounts of Rs.1,70,58,784/- in the case of Assam Rifles and Rs. 4,17,44,140/- in the case of Telecom Shillong.

Shri D.J. Paul himself had certified on the back of the TDS certificate that the TDS amount was deposited in cash whereas the usual practice in the department was to make book adjustment for the tax deducted at source.

c. The CO has cited instruction no. 1617, especially para 2B in respect of assessment completed under Section 143(1)

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of I.T. Act 1961. However, this instruction should be followed alongwith the instruction no.1618 which says that Information regarding the assessee and his general reputation and intimation received from other offices regarding the business transaction of the assessee should be looked into.

d. As per Rule 37-2(C) of I.T. Rules, 1962, the authorities who deduct tax at source shall send to the ITO the details of tax deducted at source in a quarterly statement. This was confirmed by Shri B.R. Purkayastha (State Witness-3) during the regular hearing. However, the CO did not consult/ask for such quarterly statement from the departments which were reported to have issued the TDS Certificates.

e. The scheme of summary assessment allows only for mistakes such as wrong computation of tax, wrong deduction, incorrect deduction in respect of investment allowance etc. It does not provide any scope nor give protection to ITOs (Assessing Authorities) where government money is lost by frauds/misappropriation etc.

29.

The CO has submitted the following plea:-

1. There is no scope on the part of the Income Tax Officer to act beyond the purview of the provisions of Summary Assessment Scheme as laid down in Section 143(1) of the Income Tax Act and relevant instructions, notifications and directions from the higher authority.
2. Assessment for the assessment years 1987-88 and 88-

89 had to be made of the total income or loss and the sum payable by the assessee or refundable to him on the basis of such assessment, should be determined without requiring the presence of the assessee or production by him of any evidence in support of the return. Therefore, the Assessing Officer was not expected to "process the said returns". Under the Summary Assessment Scheme, as was in force till assessment years till 1988-89, there was no scope for any inquiry.

3. The assessee submitted the returns of income under signatures and thereafter submitted petitions on 30-10-89 for early grant of refund. Again, the assessee appeared personally before the CO as well as Shri Kaisang, IRS, Assistant Commissioner of Income Tax, Silchar and insisted for early grant of refund.

4. Even the state witness Shri N.C. Bhowmick had no clear idea about the position of DDO in his department during 1986-87 and 87-88. Hence, the CO was not in a position to doubt the TDS Certificates on the basis of the designation of the officer of the Telecom Division, Shillong, given in the certificates. He had no reason to doubt the TDS Certificates shown to have been signed by the Executive Engineer.

5. The instruction no. 1617 relating to Summary Assessment clearly points out that only arithmetical accuracy of computation of total income and taxes will be ensured. Liability for penalty, interest, CDS etc. should be checked. No other checking of any sort was necessary.

Hence, verification of caste certificates for the purpose of Section 10(26) of the I.T. Act including verification of TDS Certificates, was beyond the scope of the scheme.

6. No remedial action is necessary in summary assessment cases, as the revenue loss, if any, is consciously suffered by the Government. Credit for tax was to be given on the basis of certificates.

7. Disposal of eight returns of income in a day was not abnormal. Instruction no. 1647 dt. 11-9-89 required that claims of refunds should be disposed of promptly.

8. The CO complied with the relevant instructions by promptly disposing the refund cases and by sending the refund vouchers to the respective assesseees under "A/c Payee only" through registered post with the acknowledgment due.

9. The TDS Certificates showed dates of contracts falling in 1986 and tax deductions at source were shown from 1987. There was nothing wrong in this.

10. The book adjustment procedure for TDS was reviewed in 1977 itself. Hence, cash payment of TDS was not strange.

11. The FO had confusingly relied on instruction no. 1618 which is relevant for scrutiny cases. Similarly, para 2B of instruction 1617 is relevant to company cases and not for cases of individuals.

12. The other State Witness Shri B.R. Purkayastha who himself is an Income Tax Officer deposed that there was no

scope for the Assessing Officer to verify the details submitted by the assesseees. He also stated that, he had not come across any notification/ instruction/direction/ circular for verification of TDS Certificate under the Summary Assessment Scheme.

Some of the points submitted by the PO are not tenable.

30. The CO's contention that the PO has wrongly linked the provisions of circular 1618 with the provisions of circular 1617, is correct. Circular 1618 is applicable for scrutiny cases and para 2 of the circular starts with "Scrutiny Assessment". Hence, the contention of the PO that the CO failed to follow the circular 1618 is not tenable.

31. Similarly, there is nothing abnormal in the entry regarding the dates of deductions of tax at source given in the TDS certificates. The dates of deductions of tax at source are the same as dates of payment towards the work completed. These dates are subsequent to the dates of contract.

32. The spelling error in the name SAXENA is of minor nature (SEXENA for SAXENA). No imputation can be cast on the CO for ignoring this. As pointed out by the CO, such mistakes have crept into the statements and records of the department and of the PO also. The fact that the TDS Certificates and tax returns were filled by different persons also should be kept in view. Similarly, the appearance of the official stamp impressions at the top of the certificate would not evoke any suspicion normally. That the persons hailing from Haflong would have contracted work at Shillong, is not an unusual thing.

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Income Tax Ward Silchar, has jurisdiction over assesseees from Haflong.

33. It is seen from the TDS Certificates that Shri Paul, the CO, had verified the statements relating to the cash payment of tax deducted, found in the certificates. The Income Tax Office, Shillong vide their letter dt. April 8, 1992(S-14) had clarified that the income tax deducted, if any, by the two authorities mentioned above ought to have been credited to the Central Govt. Account through book adjustment. There was scope for the CO to question the mode of payment of tax, provided cash payment for TDS was prohibited.

34. Thus, the substantive argument of the PO which requires to be examined is that:-

- a. The volume of work stated to have been executed was enormous;
- b. Even under the scheme of Summary Assessment the Assessing Officer is expected to inquire into certain facts and verify the genuineness of claims made; and in the instant case, Shri Paul should have checked whether the tax deducting authority had sent the quarterly statement of details of the tax deducted at source given in these certificates, in compliance with rule 37-2(c) of I.T. Rules 1962. This would have exposed the hollowness of the claims.

35. The failure on the part of Shri Paul to seek clarification for tax deducted at source needs to be considered in the light of the following:-

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Shri D.J. Paul completed the assessment of the case of Shri H. Simte for refund of Rs. 75,799/-, on. 8-11-89 (Ex.S-9). This is one of the cases where the certificate for tax deducted at source(TDS) was shown to have been issued by the Commandant(Engg.), Assam Rifles, North Eastern Range, Shillong. The CO has recorded a note on the request of the alleged assessee, on 3-11-89. The note reads:

Supervisor

"As the assessess hail from outside Silchar, they deserve consideration. Assesseees concerned appeared personally & explained their problem. They met ACIT Mr. Keising also. The ACIT & myself discussed the matter & considering the merits of their cases. Shri I.U. Choudhury UDC had been directed to do the needful expeditiously & Shri G.M. Das, LDC has been directed to make the entries in the RR Register updated by this time."

Thus, it appears that the person behind the fraud had managed to bring some other persons to impress upon the officers of the Income Tax Office that the applications for refund were from the bonafide individuals concerned. It also appears from the note of Shri Paul, the CO, that he had consulted the ACIT also. After discussion, a decision seems to have been taken to expedite the assessment in these cases. Thus, the CO has taken the precaution of consulting ACIT in the matter.

36.

Shri Paul had recorded the following, in the order

for refund:-

"Assessed U/S 143(1)/237. Exemption U/S 10(26). Issue R.V. for Rs.35,442/-/Rs. 40,357/- as per TDSC."

37. The department had not objected to completion of the assessment of these cases under Section 143(1) i.e. Summary Assessment Scheme. The PO also has raised objections brought out above only with reference to Summary Assessment Scheme.

38. The letters received from the officers of Assam Rifle, Shillong and Telecom Civil Division, Shillong (Ex.S-11 and S-12) by the SP, CBI clarify that there was no office/officer of the description found in the TDS Certificates. This was confirmed by the representatives of these offices who were examined as State Witnesses (SW-4 and SW-1). Further, the ITO incharge of TDS at Shillong had also informed the CIT, Shillong (vide Ex.S-14) that no quarterly/annual statement of TDS was received from the two authorities shown in the TDS Certificates in dispute. Shri B.R. Purkayastha (SW-3) confirmed that he had written the above mentioned letter. Thus, the documentary and oral evidence discussed above clearly show that the certificates regarding Tax Deducted at Source, which were submitted along with the returns for refund in these cases, were false.

39. Shri D.J. Paul, the CO, has not argued that the certificates are genuine. He had submitted the following plea:

Verification of Account/documentary evidences and other statements etc. submitted by the assesseees are examined and

thorough investigation etc. are made under Scrutiny Assessment Cases; and not in cases completed under Summary Assessment Scheme. There was no scope for the ITO to act beyond the purview of the provisions of Summary Assessment Scheme as laid down in Section 143(1) of the I.T. Act and the relevant instruction, notification, circular and directions from the higher authorities.

40. Section 143(1) of the I.T. Act 1961 for summary assessment as on 31-3-89 was as under:-

"S-143 Assessment(1)(a) - Where a return has been made under Section 139, the Assessing Officer may without requiring the presence of the assessee or the production by him of any evidence in support of the return, make an assessment of the total income or loss of the assessee after making such adjustment to the income or loss declared in the return as are required to be made under clause(b) with reference to the return and accounts and documents, if any, accompanying it, and for the purposes of the adjustment referred to in Sub-clause(iv) of Clause(b) also with reference to the record of the assessment if any of past years and determine the sum payable by the assessee or refund to him on the basis of such assessment. In making an assessment of the total income or loss of the assessee under clause(a), the Assessing Officer shall make the following adjustment to the income or loss declared in return that is to say he shall, (i) rectify any arithmetical error in return accounts and document referred to in clause(a).

41. With reference to the circulars/clarifications issued on summary assessment, Shri Paul has pleaded that the government had taken a conscious decision to introduce the Summary Assessment Scheme with full knowledge that there would be loss of revenue; the government also decided that no remedial action was necessary in such cases on the ground that loss suffered, if any, would be compensated by utilisation of resources for scrutiny of large cases; Credit for TDS certificates should be given without verification whatsoever and the Assessing Officer is not expected to make any inquiry. The circulars/clarifications relied upon by Shri Paul are available at Exhibits D-8, D-9 and D-10 (Circulars dt. 12-2-88, 26-8-87 and 27-11-86).

42. A careful reading of Section 143(1) of the I.T. Act and the circulars mentioned above regarding Summary Assessment shows that:- a. Assessment, in such cases of total income or loss of the assessee would be made with reference to the return and accounts and documents, if any. Presence of the Assessee or production by him of additional document are not required. The sum payable by the assessee or the amount refundable to him would be arrived at with reference to records of past assessment, if any. The Assessing Officer, in arriving at such assessment would make adjustments for arithmetical errors in the return, account and documents accompanying the return (the Section 143(1) (a); and

b. The mistakes in the computation of income by the Assessing Officer or incorrect return of income filed by the assessee not rectified by the Assessing Officer would not require

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any remedial measure. The Summary Assessment Scheme takes cognizance of such losses, consciously suffered by the government.

43. The Circular dt. 28-8-87 (Ex.D-9) refers to the response of the Board where a wrong claim by the assessee which lead to deduction of Rs. 2.34 lacs in respect of medical expenses on the treatment of a partner was condoned. The amount involved here is very large especially because it related to a single case. The alleged loss of Rs. 6.25 lacs in the instant case is the total amount in respect of eight assessees. The difference here in this case is that the assessment is for refund in new cases and on the basis of the TDS Certificates submitted alongwith the returns.

44. The relevant Section 143(1) of I.T. Act refers to assessment with reference to documents accompanying the return. Hence, it goes without saying that such documents accompanying must be genuine. However, the Assessing Officer cannot go beyond the spirit of the Scheme to inquire into the genuineness of the document unless he finds some aberrations apparent on the face of the document. the TDS Certificates in these cases do not contain any such aberration. The fact that the Assam Rifles and Telecom Shillong do not have any officer of the designation appearing on the TDS Certificates may not be known to the Assessing Officer.

45. That the returns have been received for the first time and the amounts involved in the individual cases for refund are considerably large; could be the only factor which would warrant for caution. But, any correspondence/verification would

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lead to delay and that would not be in compliance of the Scheme. Instruction 1647(Ex.D-11) clearly laid down:-

"The Board would, therefore, again like to emphasis that the claims of refunds should be disposed of promptly and the refund vouchers should invariably accompany the orders giving rise to the refund."

46. No other documentary evidence was produced to show that the Assessing Officer in Summary Assessment cases should ascertain the fact of TDS, from the offices concerned. Such an obligation was imposed on the Assessing Officer only after the occurrence of such incidence elsewhere also vide Circular dt. 26th December 1989 from the CIT, North Eastern Region, Shillong (a copy of this circular has been annexed to the written brief of Shri P.K. Choudhury, one of the Charged Officers. Infact Shri P.K. Choudhury has argued there that had the CIT's Office issued such circular in June 89, itself the recurrence of such fraud would not have taken place at Silchar).

47. More importantly, the practice followed in Summary Assessment Scheme was clearly stated by Shri B.R. Furkayastha (SW-3) who was holding charge of Income Tax Officer TDS, Shillong. In the regular hearing, he stated:-

"In Summary Assessment cases, there was no scope for the Assessing Officer to verify the details submitted by the assessee. I have not come across any notification/instruction/direction/circular for verification of TDS Certificates under the Summary Assessment Scheme."

This deposition of an Officer who was incharge of TDS clearly indicates that there was no practice of ascertaining Tax Deducted

at Source even from the counter part Income Tax Officer, incharge of TDS, for the purpose of issuing refund orders.

Thus, the argument of the PO is not supported even by the State Witness.

Shri D.J. Paul accepted unattested photocopies of tribal certificates purported to have been issued by Chief Judicial Magistrate, Haflong, N.C. Hills, Assam.

48. The PO has submitted the following points in support of this allegation:-

1. Under Section 10(26) of Income Tax Act, it is essential to obtain tribal certificate for giving income tax exemption.
2. Shri Paul accepted unattested photocopies of tribal certificates purported to have been issued by the Chief Judicial Magistrate, Haflong, N.C. Hills, Assam.
3. As responsible Govt. Officer, Shri Paul should have ensured that the certificates were authenticated.
4. Some of the returns were not accompanied by tribal certificates. However, Shri D.J. Paul accepted the claims of such assesseees also.

49. The CO has submitted the following plea:-

Verification of caste certificate at the relevant point of time did not arise in the cases under dispute i.e. in summary assessment cases. Only in his letter (confidential) F.No.1/Misc/Con/CT/BR-89 dt. 3-1-90 (EX.D-5), the Commissioner of Income Tax, north Eastern Region, Shillong

required that as part of verification of the genuineness of refund claims, the Income Tax Officer should satisfy himself with proper evidences that the claimants are actually members of such scheduled tribes and that their claims are actually liable to exemption under the provision of Section 10(26) of I.T. Act, 1961.

The CO has no further argument regarding this allegation.

50. Section 10(26) of the I.T. Act, 1961 provides that any income which accrues or arises to a member of a scheduled tribe indicated in that paragraph shall not be included in total income.

51. A copy of the letter dt. 20-12-90 from the Office of the Dy. Commissioner, N.C. Hills, Haflong is at Ex.S-13.

The additional Dy. Commissioner has clarified to the SP, CBI, Silchar that the certificates in dispute were not issued by his office; there was no such seal bearing the designation, "Chief Judicial Magistrate" in that office; the format of tribal certificate issued was different from that of the samples shown and the signatures of officers and dealing assistant appearing on the samples were not known to that office. It is evident that the tribal certificates submitted alongwith the returns in dispute were false. Shri Paul has also not disputed that the certificates were only photocopies and were not attested. His contention that he was not obliged to verify the certificates is part of his general argument that the Summary Assessment Scheme did not envisage such verification.

The alleged lapse on the part of Shri Paul for

accepting the tribal certificates has to be seen in the light of the following:-

1. It is not disputed that the names appearing in the returns in dispute are those of the members of scheduled tribe. Besides the alleged scheduled tribe certificates, there are applications from the alleged assessees indicating their tribe and requesting for refund.

2. As in the case of the TDS, timely instructions/clarifications have not been issued for verification of community certificates in refund cases. The letter dt. 3rd January 1990 (Ex.D-5) appears to be the first circular from the Commissioner of Income Tax, North Eastern Region, requiring the Assessing Officers to satisfy themselves with proper evidences for claim of income tax exemption/refund on the basis of scheduled tribe certificates. This circular also appears to have been issued in the wake of the fraudulent claims effected through false certificates.

3. The proper course for the department should have been to issue circular listing the competent offices/officers for issuing tribal/community certificates, the format of the certificate etc. In fact, though the format of the scheduled tribe certificate was cited as one of the listed documents, the PO could not produce it and dropped it from the list. The department have not brought any other case as evidence where similar situation was dealt with. This only confirms that the cases in dispute (submission of tribal certificates) occurred for the first time in that office.

52. Moreover, the person behind this fraud (Shri Keising James) had managed to bring other tribal persons and met Shri D.J. Paul and the ACIT, (Shri Kaisang) at the time of submitting the returns. The officers working in North Eastern Region are so familiar with the local Scheduled Tribes that they can even identify the specific tribe of a Scheduled Tribe person from his appearance.

Thus, the CO was inclined to accept the unattested tribal certificates.

V. FINDINGS

53. This case arose from a fraud for refund of alleged Tax Deducted at Source (TDS), articulated by an employee of the State Govt. of Manipur. The Income Tax returns submitted by the alleged culprit at the Income Tax office, Ward, Silchar were accepted and refunds were sanctioned on the basis of the TDS Certificates and Scheduled Tribe Certificates enclosed with the returns. The allegation against the Income Tax Officer is that he issued the refund orders without verifying the genuineness of the TDS Certificates and Scheduled Tribe Certificates.

The refund orders were issued under Section 143(1) of I.T. Act, 1961 applicable for Summary Assessment Scheme. This was not disputed by the department.

54. The thrust of various circulars/notices/clarifications issued till then by the department with regard to the above mentioned Section for Summary Assessment Scheme was speedy disposal of such cases. The Assessing Officers were given

the impression that only arithmetical errors were to be rectified. No other check was warranted. Even where apparent losses to the Government were noticed subsequent to assessment, no remedial measures were required to be taken. In one instance, Rs. 2.34 lacs was condoned by the department and this was cited as clarification/guidance. The alleged irregularity on the part of the Income Tax Officer is to be considered in this background. There was no apparent aberration in the TDS certificates. Nor the Assessing Officer had doubt about the community of the persons who filed the returns and appeared personally before him. Hence, he was inclined to accept the unattested copies of Tribal Certificates. That the returns were for pure refund and that the returns were filed for the first time were the only factors which should have prompted the Income Tax Officer to read between the lines. As a matter of abundant caution, Shri Paul should have inquired about the contracted work, payment of tax at source and the receipt of certificate for the same. The ITO had this option before him. He failed to exercise this option. But, such a failure cannot be said to be in contravention of any rule/direction/clarification in force at that time. The Assistant Commissioner of Income Tax with whom the CO discussed the matter had also not suggested for further inquiry.

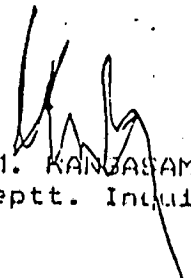
CONCLUSION

The charge that Shri Paul committed gross irregularity and negligence in the discharge of his official duties has not been substantiated. The evidence made available

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shows that Shri D.J. Paul could have inquired about the details of work contracted, deduction of tax at source etc. especially when the persons were present before him.


(F.M. KANVASAMI)
Commissioner for Deptt. Inquiries.

New Delhi.

Dated: 30-10-95

ANNEXURE-A/5

To

The Commissioner,
Income-tax, North Eastern Region,
Shillong-793 001.

Sir,

Sub: Inquiry Report on Departmental inquiry against
Shri DJ Paul, ITO, Ward-2, Silchar.

Kindly refer to your Memorandum F.No. TDS/4/Vig/Con/CT/91/Pt.III/DJP/ 1784 dated 16.12.96 on the above subject enclosing therewith a copy of the inquiry report on departmental inquiry against me which was received by me on 20.12.96 intimating thereunder that it has been proposed to impose minor penalty against me and asking me to show cause why a minor penalty should not be imposed against me on the basis of the inquiry officer's report. In due compliance with your above memorandum I have the honour to submit my reply as under:

2. That sir, I have carefully gone through the inquiry report referred to above but though I have been asked to show cause why a minor penalty should not be imposed on me on the basis of the inquiry officer's report. I do not find anything therein to warrant imposition of any penalty on me. In this connection, I beg to state that the Inquiry Officer after considering all the relevant facts and evidences and after hearing the charged officer had found as a matter of fact that the thrust of various circulars/notices/clarifications issued till then by the department with regard to the above mentioned section for Summary Assessment Scheme was speedy disposal of such cases. The Assessing Officers were given the impression that only arithmetical errors were to be rectified. No other check was warranted. Even where apparent losses to the Government were noticed subsequent to assessment, no remedial measures were required to

Certified to be true copy
Jhurkayastha
12/12/02
Advocate.

be taken. In one instance, Rs.2,34 lacs was condoned by the Department and this was cited as clarification/guidance. The alleged irregularity on the part of the Income Tax Officer is to be considered in this back ground. There was no apparent aberration. In the TDS Certificates. Nor the assessing officer had doubt about the community of the persons who filed the returns and appeared personally before him. Hence he was inclined to accept the unattested copies of Tribal Certificates(Vide para 54 of the IO's report). "On the basis of these findings the Inquiry Officer had come to the firm conclusion in this case holding that " the charge that Sri Paul committed gross irregularity and negligence in the discharge of his official duties has not been substantiated" (Vide sub para 'Conclusion' under para 54 of the IO's report). From these findings and decisions of the Inquiry Officer it is clear that the charges on the basis of which the Departmental proceedings was initiated and inquiry was instituted have failed and are of no avail. Accordingly I submit that the question of imposition of any penalty does not arise.

3. That Sir, I submit that it is unfortunate that after having found and held as mentioned and quoted in para 2 hereinabove, the Inquiry officer in the next breath proceeded to observe that " the returns were for pure refund and that the returns were filed for the first time were the only factors which should have promoted the Income tax officer to read between the lines. As a matter of abundant caution, Sri Paul should have inquired about the contracted work, payment of tax at source and the receipt of certificate for the same. The ITO had this option before him. He failed to exercise this option" Seen thereafter perhaps realising that this observation ran contrary to the spirit of the Summary Assessment Scheme and the instructions of the Board on this subject, the Inquiry Officer proceeded to add "But such a failure cannot be said to be in contravention of any rule/direction/clarification of any rule/direction/clarification in force at that

time. The Assistant Commissioner of Income tax with whom the CO discussed the matter had also not suggested for further inquiry."(Vide para 54 of the IO's report underlining mine). It is still more unfortunate that after having found and held as mentioned and quoted by me in para 2 hereinabove and after having observed as underlined by me in this para, the inquiring officer had made the observation. "The evidence made available shows that Sir DJ Paul could have inquired about the details of work contracted, deduction of tax at source etc. especially when the persons were present before him (vide last sentence of para 54 of the inquiry report). "I submit that this observation of the inquiry officer was wholly uncalled for and was contrary to his own findings and decisions mentioned and quoted by me in para 2 hereinabove. Moreover, any such failure as observed by him in the concluding sub para mentioned by me just hereinabove in this para does not bring out any default or contravention or guilt etc. on my part. The fact that the returns were for pure Refund or that these were filed for the first time does not take these cases out of the summary assessment Scheme and as these were all covered by summary assessment, scheme, no inquiry could be made in view of the instructions on the subject. If any different treatments were to be given or in other words, if any inquiry was conducted as observed by the Inquiry officer, this would tantamount to acting in disregard to or in contravention of the instructions of the Central Board of Direct Taxes regarding summary assessment scheme and would mean misuse of power and would be subversive of good conduct. Hence no fault can be attributed to me for not having made the inquiries as hinted to by the Inquiry Officer. Thereafter, I submit that the observation contained in the last sentence of sub para "Conclusion" under para 54 of the inquiry report as quoted and under lined by me hereinabove in this para.

4. That sir, in view of the facts and circumstances mentioned hereinabove, it would appear that the charges on the basis of which the Departmental proceeding was initiated and inquiry was instituted have failed it toto and are of no avail and accordingly the question of imposition of minor penalty on me does not arise. I therefore, request that the proceedings initiated against me may kindly be dropped.

Yours faithfully,

Sd/- DJ Paul
Income Tax Officer,
Ward-2, Silchar.
02.01.97

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ANNEXURE-A/6

F.No.TDS/4/Vig/Con/CT/90-91/Pt.III/DJP/223/48

OFFICE OF THE COMMISSIONER OF INCOME TAX
 NORTH EASTERN REGION ::: POST BOX NO. 20.
 SHILLONG - 793 001 (MEGHALAYA)

Dated : 7.3.1997.

ORDER under Rule 15 of CCS(CCA) Rules, 1965.

Disciplinary proceeding was initiated against Shri Dipa Jyoti Paul, Income-tax Officer (Group B), hereinafter referred to as the CO(Charged Officer) in the Income-tax Department, North Eastern Region, under Rule 14 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965 and the articles of charge framed against the CO in respect of which inquiries were held are as follows :-

2. ARTICLES OF CHARGE

ARTICLE -I

That the said Shri Dipa Jyoti Paul while functioning as an Income-tax Officer, Ward, Silchar under the charge of the Commissioner of Income-tax, North Eastern Region, Shillong during the year 1989 entertained returns of income alongwith statements of accounts and forged and fake Tax Deduction at Source (TDS) Certificates submitted in the names of non-existent and fictitious persons processed the said returns and issued refunds to the tune of Rs.6,25,271/- without verifying the genuineness of the TDS Certificates causing wrongful loss to the Government and has, therefore, committed gross irregularity and negligence in the discharge of his official duties violating the provision of Rules 3(1)(i) and 3(1)(ii) of the CCS(Conduct) Rules, 1964.

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Jhurnayasha
12/12/02

Advocate

ARTICLE - II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri D.J. Paul has accepted unattested photo copies of the Tribal Certificates purported to have been issued by the Chief Judicial Magistrate, Haflong, N.C. Hills, Assam whereas the Chief Judicial Magistrate is not the competent authority for issuing such Tribal Certificates. Shri D.J. Paul, was, therefore, careless in the discharge of his official duties and has violated the provision of Rules 3(1)(i) and 3(1)(ii) of the CCS(Conduct) Rules, 1964.

ARTICLE - III

That during the aforesaid period and while functioning in the aforesaid office, the said Shri D.J. Paul has issued refund orders without verifying the fact of credit of the 2% tax deducted at source to the Govt. accounts and has, therefore, committed gross irregularity and negligence in the discharge of his official duties contravening the provisions of Rules 3(1)(i) and 3(1)(ii) of the CCS(Conduct) Rules, 1964.

ARTICLE - IV

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Dipa Jyoti Paul has passed refund orders in undue haste with obvious motive to favour the assessee concerned and has, therefore, not maintained absolute integrity and impartiality as laid down in Rules 3(1)(i) of the CCS(Conduct) Rules, 1964.

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3. The CO was informed of the charge framed against him vide this office Memorandum No. TDS/4/Vig/Con/CT/90-91/Pt. III/DJP/557 dt. 22.7.93 which was served on him on 10.8.93. He was given an opportunity to submit a written statement of his defence and also to state whether he desired to be heard in person. He was also informed that an inquiry will be held only in respect of those articles of charge as are not admitted.

4. The CO has submitted a written statement of his defence wherein he has categorically denied the charges framed against him.

5. Considering the replies given by the CO it was felt necessary to hold a regular inquiry for which Shri P.M. Rangasami, Commissioner for Departmental Inquiries, CVC, New Delhi was appointed as Inquiry Authority hereinafter referred to as IO vide this office No. TDS/4/Vig/Con/CT/90-91/Pt. III/DJP/976-979 dt. September 7/19, 1994.

6. The IO conducted the inquiry and his finding was that "the charge that Shri Paul committed gross irregularity and negligence in the discharge of his official duties has not been substantiated. The evidence made available shows that Shri D.J. Paul could have inquired about the details of work contracted, deduction of tax at source etc. especially when the persons were present before him".

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7. [The Board carefully considered the inquiry report and observed that since the refunds were claimed under section 10(26) of the Income-tax Act, 1961; the Income-tax Officer could have been more careful in checking the accuracy of Tribe Certificate issued by the Magistrate, or possibly, authenticated copy of the certificate could have been insisted upon. To that extent the CO is not free from blemishes. Taking into account the totality of facts on the part of the CO on the basis of the IO's report, the Board proposed to impose a minor penalty on the CO under Rule 11 of the CCS(CCA) Rules, 1965.

8. A copy of the inquiry report was given to the CO and through a Memorandum served on him he was given an opportunity to show cause why a minor penalty should not be imposed against him on the basis of the IO's report.

9. The CO has submitted a note of compliance in which he has not accepted the proposed imposition of a minor penalty.

10. [The Board after considering the submissions of the CO, has decided that a penalty of 'Censure' may be immediately levied on Shri D.J. Paul, the CO.]

11. The undersigned, accordingly under Rule 15 of the Central Civil Services(Classification, Control and Appeal) Rules, 1965 hereby imposes on the said Shri Dipa Jyoti Paul, the CO the minor penalty of 'Censure' as enunciated in clause (1) of Rule 11 of the said Rules. A record of this penalty be

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kept in the confidential roll of the Shri Dipa Jyoti Paul,
the CO.

(V. Tochhawng)
Commissioner of Income-tax,
North Eastern Region,
Shillong.

(Disciplinary Authority)

✓ Shri Dipa Jyoti Paul,
Income-tax Officer, Ward-2,
Silchar.

Copy to :-

1. Shri Sunil Gupta, Under Secretary to the Govt. of India, Central Board of Direct Taxes, New Delhi for kind information.
2. Ms. N. Mansukhani, Addl. Director of Income-tax(Vig.), Directorate of Income-tax(Vigilance), Central Board of Direct Taxes, First Floor, Dyal Singh Public Library Building, 1, Deen Dayal Upadhyay Marg, New Delhi - 110 002 for kind information with reference to DIT(Vig.)'s F.No. DP/G/794/Vig-VI/93 dated 6.3.97.
3. The Chief Commissioner of Income-tax, Central Revenue Building, Gardiner Road, Patna - 800 001 (Attention : Shri Arvind Kumar, ACIT(Vig.)) for kind information with reference to his letter F.No. CC/Vig/VIII-27/93-94/675 dt. 6.3.97.
4. The Deputy Inspector General of Police, CBI/NE Region, Chenikuthi Hill Side, Guwahati - 781 003 for information with reference to his letter No. 2280/3/B(A)/90-SLC dt. 3.7.96. A copy of the Inquiry Report and a copy of the Board's advice under F.No. DP/G/794/Vig-VI/93 dt. 6.3.97 are enclosed.
5. The Superintendent of Police, CBI/SPE, Panchayat Road, Near G.C. College, Silchar - 788 004, Cachar, Assam for information and necessary action. A copy of the Inquiry Report and a copy of the Board's advice under F.No. DP/G/794/Vig-VI/93/ dt. 6.3.97 are enclosed.
6. The Deputy Commissioner of Income-tax, Silchar Range, C.R. Building, Circuit House Road, Silchar - 788 001 (By Name) for information and necessary action. He is requested to get the enclosed order served on the Shri D.J. Paul, ITO, Ward-2, Silchar at once and to return the acknowledgement urgently.
7. The Presenting Officer.

(S. Kharpor)
 Asstt. Commissioner
 of Income-tax(Vig.),
 for Commissioner of Income-tax,
 North Eastern Region,
 Shillong.

BEFORE THE HON'BLE PRESIDENT OF INDIA
RASRRAPATI BHAWAN : NEW DELHI

IN THE MATTER OF -

An order under Rule 15
of the C.C.S. (C.C.A) Rules
1965 dated the 7th. March/97
passes by the Commissioner
of Income-tax, North Eastern
Region, Shillong (Disciplinary
Authority)

A N D

IN THE MATTER OF.-

Filing an appeal under
Rule 23 of the C.C.S (C.C.A)
Rules, 1965 against the above
said order dated the 7th.
March, 1997 of the Disciplinary
Authority.

A N D

IN THE MATTER OF -

Sri Dipa Jyoti Paul,
Income-tax Officer,
Ward-II, Silchar,
P.O. Silchar -788004
Dist- Cachar, State-Assam
..... APPELLANT

The appellant abovenamed

MOST RESPECTFULLY SUBMITS :-

1. That Sir, the appellant is serving the Govt. of India in his capacity as Income-tax Officer, Group 'B'

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Ghurbarajtha
Advocate 12/12/02

In the Income-tax Department under the Ministry of Finance, Central Board of Direct Taxes and is posted at Ward-2, Silchar in the Charge of Commissioner of Income-tax, North Eastern Region, Shillong. The appellant has all along been discharging his duties and functions to the best of his abilities and strictly complying with the terms of the relevant statute (Income-tax Act and Rules) and with the various circulars, Instructions and directions issued from time to time by the higher authorities and the appellant has all along been under the belief and impression that the higher authorities are fully satisfied with his performances and conduct. Accordingly, the appellant was expecting his promotion to the next higher grade in usual turn and though he has reached the age of superannuation and is now on the verge of retirement, he has been denied promotion despite the fact that many of his juniors have already got their promotion since about 4 (four) years past superseding him.

2. That Sir, the appellant much to his surprise received on 10.08.1993 vide F.No. TDS/A/Vig/Con/CT/90-91/Pt-III/DJP/557 dated 22.07.93 from the Commissioner of Income-tax, North Eastern Region, Shillong (Disciplinary Authority) communicating that the disciplinary proceeding was initiated against the appellant on the charges as mentioned therein (copy enclosed as Annexure 'I'). The appellant presumes that it was because of the disciplinary proceedings contemplated and subsequently initiated against him that promotion was denied to the appellant though his juniors were promoted to the next higher grade superseding him.

3. That Sir, the appellant submitted his written replies on the various charges levelled against him before the Commissioner of Income-tax, North Eastern Region, Shillong (Disciplinary Authority) denying

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all the charges and mentioning the basis and evidences in support of the replies made. A copy of the replies submitted before the Commissioner of Income-tax, North Eastern Region, Shillong (Disciplinary Authority) is enclosed hereto as Annexure 'II'. Subsequently the case was taken up by the Inquiry Officer and the appellant also appeared for hearing before the learned Inquiry Officer and explained his case thoroughly.

4. That Sir, the learned Inquiry Officer drew up his inquiry report on 30.10.95, a copy of which was received by the appellant on 26.12.96 under P.No. TDS/4/vig/Con/CT/90-91/Pt-III/DJP/1784 dated 16th December, 1996 of the Commissioner of Income-tax, North Eastern Region, Shillong (Disciplinary Authority). By this Memorandum the learned Commissioner of Income-tax, N.E. Region, Shillong (Disciplinary Authority) intimated that "on the advice of the CVC it is proposed to impose minor penalty against him" and thereafter the appellant was asked to show cause why a minor penalty should not be imposed against him on the basis of the Inquiry Officer's report. A copy of the said memorandum together with the copy of the Inquiry Officer's report is furnished herewith as Annexure-III.

5. That Sir, the appellant furnished his written reply to the learned Commissioner of Income-tax, N.E. Region, Shillong, on 02.01.1997. A copy of which is enclosed as Annexure 'II'. In this reply, the appellant after quoting the findings of the learned Inquiry Officer clearly showed that there was nothing in the findings of the learned Inquiry Officer to warrant imposition of any penalty on the appellant and the appellant accordingly requested the learned Commissioner of Income-tax, N.E. Region, Shillong (Disciplinary Authority) to drop the proceedings initiated against him.

6. That Sir, the appellant much to his surprise received the order passed under Rule 15 of the C.C.S (C.C.A.) Rules, 1965 dated 07.03.1997 on 13.03.97 under F. No. TDS/4/Vig/Con/CT/90-91/Pt.III/DJP/2231 dated 07.03.1997 of the Commissioner of Income-tax, N.E.R., Shillong (Disciplinary Authority) imposing the minor penalty of 'Censure' as enunciated in Clause (1) of Rule 11 of the said Rules and directing that a record of this penalty should be kept in the confidential roll of the appellant (copy of this order is enclosed as Annexure 'V'). The appellant being highly aggrieved by this order of Learned Commissioner of Income-tax, N.E.Region, Shillong (Disciplinary Authority) files this appeal on the following grounds :

GROUNDS OF APPEAL

I. For that the Learned Commissioner of Income-tax, N.E.Region, Shillong (Disciplinary Authority) is not justified in imposing the minor penalty of 'Censure' to the appellant ;

II. For that the learned Commissioner of Income-tax, N.E.R., Shillong (Disciplinary Authority) is not justified in not giving promotion to the next higher grade to the appellant but in granting promotion to his juniors in supersession of the appellant.

7. That Sir, the order under section 15 of the C.C.S.(C.C.A) Rules, 1965 dated 7.3.1997 having been received by the appellant on 13.03.1997, this appeal is within time as per Rule 25 of the C.C.S (C.C.A) Rules, 1965.

.. 5 ..

8.. That Sir, the appellant makes the following submissions in regard to the grounds of appeal

Regarding Ground No. I

1) The learned Commissioner of Income-tax, N.E. Region, Shillong (Disciplinary Authority) in para 6 of his order dated 7.3.97 has referred to the findings of the learned Inquiry Officer. In these findings quoted in the order of the Commissioner of Income-tax, N.E. Region, Shillong, the Inquiry Officer clearly mentioned in the first place that " the charge that Sri Paul committed gross irregularity and negligence in the discharge of his official duties has not been substantiated ". This is the main and substantial findings and conclusion of the learned Inquiry Officer. However, in the next place, the learned Inquiry Officer mentioned that " the evidence made available shows that Sri D.J.Paul could have inquired about the details of work contracted, deduction of tax at source etc., especially when the persons were present before him ".

This very last sentence of the learned Inquiry Officer's report is only an observation which was of the nature of a passing remark and which was unwarranted in the circumstances of the case. This observation ran contrary to the letter and spirit of the Summary Assessment Scheme and the instructions of the Board on this subject. The Learned Inquiry Officer himself earlier in the same para i.e., Para 54 of his report had come to the findings that " The thrust of various circulars/ notices/clarifications issued till then by the Department with regard to the above mentioned section for summary assessment scheme was speedy disposal

of such cases. The Assessing Officers were given the impression that only arithmetical errors were to be rectified. No other check was warranted. Even where apparent losses to the Government were noticed subsequent to assessment, no remedial measures were required to be taken. In one instance, Rs.2.34 lacs was condoned by the department and this was cited as clarification/guidance. The alleged irregularity on the part of the Income-tax Officer is to be considered in this background. There was no apparent aberration in the TDS certificates. Nor the Assessing Officer had doubt about the Community of the persons who filed the returns and appeared personally before him. Hence, he was inclined to accept the unattested copies of Tribunal certificates. That the returns were for pure refund and that the returns were filed for the first time were the only factors which should have prompted the Income-tax Officer to read between the lines. As a matter of abundant caution, Shri Paul should have inquired about the contracted work, payment of tax at source and the receipt of certificate for the same. The ITO had this option before him. He failed to exercise this option. But, such a failure can not be said to be in contravention of any rule/direction/clarification in force at that time. The Assistant Commissioner of Income-Tax with whom the CO discussed the matter had also not suggested for future further inquiry. (Underlining by the appellant)

11) In para 7 of the order under Rule 15 of the C.C.S. (C.C.A) Rules, 1965 dated 7.3.1997, it was observed that " Since the refunds were claimed under section 10(26) of the Income-tax Act, 1961, the Income-tax Officer could have been more careful in checking the accuracy of TDS Certificate issued

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by the Magistrate, or possibly, authenticated copy of the certificate could have been insisted upon. To that extent the CO is not free from blemishes. Taking into account the totality of facts on the part of the CO on the basis of the IO's report, the Board proposed to impose a minor penalty on the CO under Rule 11 of the C.C.S (CCA) Rules, 1965. This observation is similar to the observation mentioned in the report of the Inquiry Officer and referred to in sub-para (1) of para 8 here-in-above. Since such observation run contrary to the letter and spirit of the Summary Assessment Scheme and the instructions of the Board on the subject, the learned Inquiry Officer himself had not counted the same as having any adverse affect vide his findings. " But such a failure can not be said to be in contravention of any rule/direction/clarification in force at that time. The Assistant Commissioner of Income-tax with whom the C.O discussed the matter had also not suggested for further inquiry " (vide para 54 of the IO's report underlining mine). The appellant submits that the fact that the refunds were claimed under section 10(26) of the I.T. Act, 1961 could not in any way change the position that the cases were covered by Summary Assessment Scheme under which there was no scope on the part of the Income-tax Officer to make any enquiry in regard to the accuracy of the Tribal Certificate and there was also no scope for the Income-tax Officer to insist upon authenticated copies of the Tribal certificates. Since the cases were covered by Summary Assessment Scheme, no such enquiry could be made in view of the instructions of the Board on this subject (vide copies enclosed as Annexure 'VIA, VIB, VIC & VID). If any different treatments were to be given or in other words if any further inquiry was conducted as indicated in para 7 of the order passed by the Commissioner of Income-tax, N.E.R., Shillong (Disciplinary Authority) under Rule

15 of the CCS (CCA) Rules, 1965 dated 7.3.1997, this would tantamount to acting in disregard to or in contravention of the instructions of the Board regarding Summary Assessment Scheme and would mean misuse of power which would be subversive of good conduct. Therefore, no fault can be attributed to the appellant for not having made any such enquiry as hinted to by the Learned Inquiry Officer in the last sentence of para 54 of his report or in para 7 of the order under Rule 15 of the CCS (CCA) Rules, 1965.

REGARDING GROUND NO.II

This ground is corollary to ground NO. I mentioned herein above in view of the fact that the appellant not having done anything wrong and not having been given expected promotion to the next higher grade though his juniors were given promotion superseding him. The appellant presumes that this has happened simply because of the Departmental proceedings contemplated and initiated against him.

The appellant also presumes that the imposition of the above minor penalty which is unwarranted in view of the facts and circumstances mentioned and explained herein above has operated against the promotion of the appellant.

9. That Sir, in the above premises, the appellant most respectfully claims the following relief in the appeal :

- 1) That the minor penalty of 'Censure' imposed by the learned Commissioner of Income-tax, North Eastern Region, Shillong (Disciplinary Authority) on the appellant may kindly be quashed or cancelled.

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- 11) That Sir, necessary directions may kindly be issued for giving promotion to the appellant with retrospective effect conferring upon him all the financial benefits arising out of such promotion.

VERIFICATION

I, Shri Dipajyoti Paul do hereby firmly affirm that facts stated here in above are true to the best of my knowledge and belief and the submissions have been made in good faith.

Yours faithfully,

Dipajyoti Paul
31.3.97

(Dipajyoti Paul)

Signature of Appellant

Dated Silchar, the
31st Nov, 1997.

ANNEXURE-A/8IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATIORDER SHEET**APPLICATION No. 169 of 1998**

Applicant : Shri Dipa Jyoti Paul

-vs-

Respondent : Union of India & Ors

Advocate for the applicant : Mr JL Sarma,
Mr M Chanda,
Mrs S Deka.Advocate for the Respondents Mr AK Choudhury,
Addl. CGSC**26.8.98**

This application has been filed by the applicant challenging the penalty imposed on the applicant. The facts are -

The applicant was an Income tax Officer. At the relevant time he was posted as Income tax Officer, Ward, Silchar, under the Commissioner of Income tax, Shilong. A disciplinary proceeding was initiated against the applicant on 27.7.93. On completion of the proceedings the applicant was not found guilty. According to the Enquiry Officer the charge could not be substantiated. In spite of that disciplinary authority imposed penalty of "Censure"

Being aggrieved the applicant preferred an appeal dated 31.3.97. Till now the said appeal has not been disposed of. Hence the applicant approached this Tribunal.

We have heard Mr JL Sarkar, learned counsel appearing on behalf of the applicant and Mr AK Choudhury, learned Addl. CGSC. On the date of

*Certified to be true copy**Jhurbayastha*
12/12/02
Advocate

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Admission we requested to Mr AK Choudhury to receive instruction. But today he submits that he has not received any instruction.

Mr Sarkar submits that it was un-reasonable on the part of the disciplinary authority to impose the penalty when the enquiry officer found him not guilty. We have also heard Mr AK Choudhury. On hearing counsel for the parties we feel it expedient that a statutory appeal already filed should be disposed of. Accordingly, we dispose of the present application with a direction to the respondents to dispose of the appeal. It shall be done as early as possible at any rate within a period of two months from the receipt of this order. Application is disposed of. No order as to costs.

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMN)

Memo No.2932

dated 9.10.98

Copy for information and necessary action to -

1. Shri Dipajyoti Paul, Retired Income tax Officer, Ward II, Silchar, PO Silchar-4, Dist Cachar, Assam.
2. The Secretary to the Govt of India, Ministry of Finance, New Delhi.
3. The Commissioner of Income Tax, North Eastern Region, Shillong - 793 001.
4. Central Board of Direct Taxes, Government of India, Ministry of Finance, New Delhi.

Sd/- SECTION OFFICER(J)

ANNEXURE-A/9**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI****ORDER SHEET****APPLICATION No. 168 of 1998**

Applicant : Shri Dipa Jyoti Paul

-VS-

Respondent : Union of India & Ors

-P R E S E N T -

THE HON'BLE JUSTICE SHRI DN BARUAH, VICE CHAIRMAN
THE HON'BLE SHRI GL SANGLYINE, MEMBER(A)Advocate for the applicant : Mr JL Sarma,
Mr M Chanda,
Mrs S Deka.Advocate for the Respondents Mr AK Choudhury,
Addl.CGSC**26.8.98**

This applicant has filed another application for quashing the penalty after departmental proceeding, against which the applicant has submitted an appeal which is pending for more than 1(one) year. The OA No.169/98 has been disposed of with a direction to the respondents to dispose of the statutory appeal. In view of that we are not inclined to pass any order. Accordingly, this application is disposed of without any order.

However, liberty is given to the applicant to approach this Tribunal, if he is still aggrieved after the disposal of the appeal.

Sd/- VICE CHAIRMAN

Sd/- MEMBER(ADMN)

*Certified to be true copy**Jhankar Das*
12/12/02*Adm. Secy.*

Before the Hon'ble Mr. Justice D. N. Choudhury, Vice-Chairman and the Hon'ble Mr. K. K. Sharma, Administrative Member in the Central Administrative Tribunal, Guwahati Bench, Guwahati.

In the matter of Sri Dipajyoti Paul, Income-Tax officer (Retd.) Sunil Sarkar Lane, Silchar - 788004 (Applicant).

Vs

The Union of India & others (Respondents)

Through

- (1) The Chairman, Central Board of Direct Taxes, North Block, New Delhi and
- (2) The Director of Income-Tax (vigilance) Central Board of Direct Taxes, New Delhi.

And

In the matter of O. A. NOS. 168/98, 169/98 and Review Application No. 5 of 2001 in O. A. No. 168/98.

Most respectfully, the Applicant submits :-

That Sir, the applicant submitted application and moved the Tribunal (CAT) by two OAS & One Review application which were numbered & registered as O.A. No. 168/98, 169/98 & R.A. No. 5 of 2001 in O.A. No. 168/98.

That Sir, The Tribunal directed the Respondents to dispose of the appeal preferred by the Applicant departmentally within specific time limit and disposed of the O.A. Nos. & R.A. No. mentioned above without any order accordingly.

That Sir, the Respondent is lingering the matter without any valid reason till date and natural justice is being denied to the Applicant.

That Sir, the Applicant feels that the Departmental appeal is not a bar for disposal of the O.A.S. referred to the above since all the Departmental remedies for relief were exhausted before submission of application Under Section 19 of the Administrative Tribunal Act, 1985 and the Applications in O.A. No. 168/98 & 169/98 were submitted on time as per provisions contained in Section 21 of the Administrative Tribunal Act, 1985.

That Sir, the proceeding initiated against the applicant on the same subject matter & identical cause of action on which three other proceedings were initiated against Sri Sahadev Kumar Mazumder, ITO, Dibrugarh who moved the tribunal in O.A. No. 1 of 2000, 2 of 2000 dt. 20.02.2001 and No. 187 of 1999 dt. 4.4.2001 and the Tribunal allowed full relief in tribunal's order mentioned here-in-above without awaiting the fate of the Departmental appeal preferred by Sri Sahadev Kumar Mazumder.

Certified to be true copy

Jhankarajasta
12/12/02
Adviser

That Sir, In the facts & circumstances of the case, the Applicant prays for the following relief :-

- (1) The Applicant's prayer may kindly be considered in view of O.A. No. 1 of 2000, 2 of 2000 dt. 20.2.2001 & 187 of 199 dt. 4.4.2001;
- (2) The Applicant prays that the penalty of 'censure' imposed be set aside & quashed;
- (3) The Applicant be promoted as Assistant Commissioner of Income-Tax with retrospective effect with consequential financial benefits;
- (4) The retirement benefits viz, Pension, death-cum-gratuity, Leave encashment etc. be recalculated as a result of the promotion prayed for;
- (5) Necessary orders may kindly be passed with costs.

Verification

I Sri Dipajyoti Paul son of Late Debendra Kumar Paul resident of Sunil Sarkar Lane, Silchar - 788004 do hereby verify that the contents of the above submissions are true to the my personal knowledge and believed to be true on legal advice and that I do not suppress any material facts.

Dated, the

5th Nov. 2002

Signature of the Applicant

ANNEXURE-A/11IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATIORDER SHEETReview Application No.5 of 2001

In OA No.168/98

Applicant : Shri Dipa Jyoti Paul(Retd)

-vs-

Respondent : Union of India & Ors

Advocate for the applicant : Applicant in person

Advocate for the Respondents : Mr AK Choudhury,
Addl.CGSC11.10.01ORDER

This is the third round of litigation. In OA 168/98 direction was issued on the respondents to dispose of the representation. From the materials available it transpired that a representation along with enclosures dated 13.5.2000 received from the applicant by the Ministry of Law, Justice & Company Affairs was sent to the Chairman, CBDT, Department of Revenue for appropriate necessary action. It seems that the applicant is yet to be made aware as to what order was passed on the same representation. If any order was passed necessarily the same order was required to be communicated to the applicant. Be that as it may, instead of lingering on the matter we direct the Chairman, Central Board of Direct Taxes, Department of Revenue to dispose of the representation sent by Shri Dipajyoti Paul, which was forwarded by the Section Officer, Ministry of Law, Justice & Company Affairs vide F No.A-60011/212/99-Admn.I (LA) dated 29.8.2000, if not already disposed of within three weeks from the receipt of the order. If such representation is disposed of, the said

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Jhankarabha

12/12/02

Advocate.

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authority is ordered to communicate the result of the same to the applicant in his address.

It will be open to the applicant to come before the Tribunal, if he is still aggrieved by the order passed by the CBDT.

The application thus stands disposed of. There shall, however, be no order as to costs.

Sd/- VICE CHAIRMAN

Sd/- MEMBER (A)

ALL INDIA SENIORITY LIST OF INCOME TAX OFFICERS AS ON 01-11-1992.

(Including names of Officers appointed as Income-Tax Officers upto 31-12-1990)

| Sl. No. | Name of the Income-Tax Officer | Date of Birth | Region | Whether SC/ST | Date of appointment to the grade | Remarks |
|---------|--------------------------------|---------------|---------|---------------|----------------------------------|-------------------|
| 1. | 2. | 3. | 4. | 5. | 6. | 7. |
| | S/Srri | | | | | |
| 1. | P.K. Biswas | 01-05-35 | WB | SC | 19-10-70 | Under Suspension. |
| 2. | H.V. Lakhiani | 15-11-35 | Bombay | Neither | 11-02-71 | |
| 3. | K.K. Bhattacharjee | 01-01-35 | WB | " | 19-02-71 | |
| 4. | P. Rajaram | 22-04-35 | TN | " | 15-03-72 | Under Suspension. |
| 5. | Monimoy Mukherjee | 30-04-41 | WB | " | 18-09-72 | |
| 6. | V.D. Dubey | 09-01-44 | Bombay | " | 29-05-73 | |
| 7. | D.M. Joshi | 07-07-36 | Gujarat | " | 05-11-73 | |
| 8. | K.P.D. Nair | 25-05-43 | Bombay | " | 28-07-75 | |
| 9. | A.C. Mishra | 05-09-44 | MP | " | 25-08-75 | |
| 10. | Ms.A.G. Dalvi | 24-09-36 | Gujarat | " | 18-08-75 | |
| 11. | Mrs.B.Pritpal Singh | 15-11-38 | Delhi | " | 06-12-75 | |
| 12. | V. Chellapan | 09-09-38 | Bombay | " | 04-02-76 | |
| 13. | R.C.Srivastava | 26-03-36 | MP | " | 22-06-76 | |
| 14. | V.K. Arora | 08-06-45 | Kanpur | " | 07-07-76 | |
| 15. | S. Nagarajan | 07-07-48 | TN | " | 27-01-77 | |
| 16. | Ms.J.R.Wadhwa | 03-09-37 | Bombay | " | 15-06-77 | |
| 17. | Subash Chandra Pahwa | 15-01-48 | Patiala | " | 08-07-77 | |
| 18. | Phalguni Mukhopadhyay | 01-07-46 | WB | " | 11-07-77 | |
| 19. | B.G. Shinde | 05-10-43 | Pune | SC | 29-12-77 | |
| 20. | E.S. Titus | 20-10-46 | Nagpur | Neither | 26-12-77 | |
| 21. | S.M. Ajbani | 27-11-41 | Gujarat | " | 28-12-77 | |
| 22. | S.G. Joshi | 17-07-39 | Bombay | " | 28-12-77 | |
| 23. | M.T. Nathani | 07-03-35 | Bombay | " | 29-12-77 | |
| 24. | B.N. Pandey | 15-01-42 | Bombay | " | 30-12-77 | |
| 25. | K.N. Chandiramani | 07-06-36 | Bombay | " | 28-12-77 | |
| 26. | Tapas Kr.Dasgupta | 19-12-47 | WB | " | 03-01-78 | |

Contd...2/-

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Jhunjhunwala

12/12/02

Advocate

| 1. | 2. | 3. | 4. | 5. | 6. | 7. |
|------|----------------------|----------|-----------|---------|----------|--------|
| 142. | P.P. Saxena | 06-08-49 | MP | Neither | 21-09-82 | |
| 143. | A. Phanibhushana Rao | 2-07-43 | AP | " | 24-09-82 | |
| 144. | Bhopal Singh | 05-05-52 | Kanpur | SC | 04-10-82 | |
| 145. | N.M. Ujjainkoppa | 08-07-42 | Karnataka | Neither | 11-10-82 | |
| 146. | K.V. Narahari | 16-08-35 | Karnataka | " | 11-10-82 | |
| 147. | A. Krishnan | 14-09-49 | Pune | " | 12-10-82 | |
| 148. | Satya Narain Lal | 05-07-35 | Lucknow | " | 15-10-82 | |
| 149. | V.S. Kandalgaonkar | 01-07-44 | Bombay | " | 08-12-82 | |
| 150. | L.S. Kini | 13-04-37 | Bombay | " | 31-11-82 | |
| 151. | H.D. Verma | 07-03-36 | MP | SC | 18-11-82 | |
| 152. | T.P. Ramaiah | 16-04-38 | Karnataka | Neither | 26-11-82 | |
| 153. | R.C. Bhatti | 01-05-44 | Gujarat | " | 29-11-82 | |
| 154. | D.C. Gupta | 06-05-35 | Rajasthan | " | 06-12-82 | |
| 155. | J.L. Bedole | 28-07-42 | MP | SC | 14-12-82 | |
| 156. | M.R. Subhedar | 15-04-38 | Pune | Neither | 27-12-82 | |
| 157. | Mukul Kumar Das | 25-04-36 | WB | " | 31-12-82 | |
| 158. | Tek Bahadur Chhetry | 21-08-35 | WB | " | 28-01-83 | |
| 159. | Nepal Chandra Pandey | 09-12-36 | WB | " | 31-12-82 | |
| 160. | Tarun Kanti Majumdar | 18-01-47 | WB | Neither | 31-12-82 | |
| 161. | Dilip Roy | 13-08-48 | WB | " | 31-12-82 | |
| 162. | A.D. Zurale | 05-05-48 | Pune | " | 10-01-83 | |
| 163. | T.N. Tanwani | 15-09-38 | Rajasthan | " | 13-01-83 | |
| 164. | Babu Joseph | 13-01-51 | Gujarat | " | 07-01-83 | |
| 165. | P.M. Makwana | 01-06-42 | Gujarat | SC | 17-01-83 | Decm d |
| 166. | M.J. Doria | 13-03-45 | Gujarat | SC | 17-01-83 | |
| 167. | C.K. Parmar | 13-02-42 | Gujarat | SC | 17-01-83 | |
| 168. | K.D. Madia | 06-09-40 | Gujarat | ST | 17-01-83 | |
| 169. | Joginder Singh | 10-03-47 | Bombay | Neither | 22-01-83 | |
| 170. | R.G. Kukreja | 15-01-38 | Bombay | " | 24-01-83 | |
| 171. | G.R. Bhosala | 24-06-44 | Bombay | " | 19-01-83 | |
| 172. | A.M. Ali | 25-11-37 | Kerala | " | 20-01-83 | |
| 173. | K. Govindan | 27-11-38 | TN | SC | 21-01-83 | |
| 174. | G. Munivernkatappa | 24-02-39 | Karnataka | SC | 21-01-83 | |
| 175. | D.J. Paul | 01-04-39 | NER | Neither | 24-01-83 | |
| 176. | M.N. Das | 22-04-42 | NER | SC | 21-01-83 | |
| 177. | B.R. Dayanand | 17-12-39 | AP | SC | 24-01-83 | |

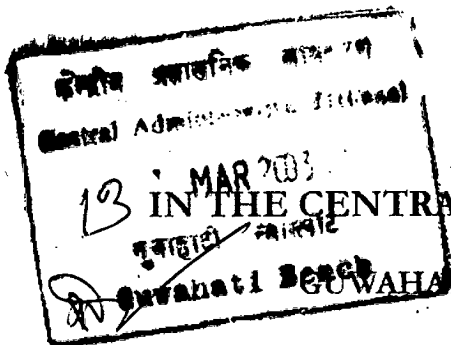
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| 1. | 2. | 3. | 4. | 5. | 6. | 7. |
|------|-------------------------------|----------|-----------|---------|----------|----|
| 532. | H.N.Krishnamurty | 18-01-51 | Karnataka | Neither | 01-03-84 | |
| 533. | Rath Bhusan Mazumdar | 24-09-44 | WB | " | 20-02-85 | |
| 534. | Bijit Kr. Roy | 30-04-36 | WB | " | 19-02-85 | |
| 535. | Sunil Kr. Saxena | 18-03-52 | Kanpur | " | 21-02-85 | |
| 536. | Vijoy Bahadur Singh | 8-08-54 | Kanpur | " | 02-02-85 | |
| 537. | Dipak Kr. Nandy | 11-11-51 | WB | " | 27-02-85 | |
| 538. | Hari Prasad Saha | 28-01-39 | WB | " | 27-02-85 | |
| 539. | Tarak Nath Chakraborty | 02-10-35 | WB | " | 27-02-85 | |
| 540. | Manaranjan Biswas | 03-03-50 | WB | " | 27-02-85 | |
| 541. | Rajarshi Dasgupta | 1-08-50 | WB | " | 27-02-85 | |
| 542. | Rabindra Nath Mukherjee | 01-04-37 | WB | " | 27-02-85 | |
| 543. | A.K. Mong | 01-02-52 | Delhi | " | 02-03-85 | |
| 544. | E.F. Mathew | 21-10-39 | Gujarat | " | 04-03-85 | |
| 545. | Sahadev Kr. Majumdar | 30-09-41 | Shillong | " | 12-03-85 | |
| 546. | V.D. Shinde | 22-02-35 | Karnataka | " | 12-03-85 | |
| 547. | S.L. Agnithotri | 15-06-36 | Lucknow | " | 30-03-85 | |
| 548. | R.S. Gupta | 25-12-35 | Kanpur | " | 04-04-85 | |
| 549. | Shyam Lal | 01-01-43 | MP | SC | 29-03-85 | |
| 550. | P.K. Biswas | 07-01-38 | Delhi | Neither | 01-04-85 | |
| 551. | Raghubir Sharan Gupta | 25-12-35 | Kanpur | " | 04-04-85 | |
| 552. | Balbir Singh | 01-01-46 | Patiala | SC | 04-04-85 | |
| 553. | N.W. Jain | 20-04-46 | Delhi | Neither | 01-05-85 | |
| 554. | M.C. Jain | 03-09-37 | Rajasthan | " | 04-06-85 | |
| 555. | Chandan Kr. Deb Mazumdar | 15-01-41 | WB | " | 24-05-85 | |
| 556. | Anit Ch. Ukil | 01-02-37 | WB | " | 24-05-85 | |
| 557. | Pravat Rn. Cha- kraborty | 11-12-45 | WB | " | 27-05-85 | |
| 558. | Pijush Kanti Bhakta | 5-01-40 | WB | SC | 24-05-85 | |
| 559. | Dulal Ch. Mukherjee | 8-06-42 | WB | Neither | 24-05-85 | |
| 560. | Harendra Nath Mandal | 23-12-40 | WB | SC | 27-05-85 | |
| 561. | Murari Mohan Bhattacharjee | 12-11-42 | WB | Neither | 24-05-85 | |
| 562. | Sadhan Bhatta- charjee | 14-08-54 | WB | " | 27-05-85 | |
| 563. | G.Srirama Murty | 12-03-37 | AP | " | 13-06-85 | |
| 564. | A. Swamy Naidu | 10-03-36 | AP | " | 14-06-85 | |
| 565. | M.R. Gupta | 26-10-35 | Patiala | " | 25-06-85 | |

Contd...17/-

| 1. | 2. | 3. | 4. | 5. | 6. | 7. |
|------|---------------------------|----------|-----------|---------|----|------------------------------|
| 566. | Nirmal Singh | 13-04-41 | Patiala | SC | | 16-07-85 |
| 567. | K.K. Rajagopalan | 01-05-30 | TN | Neither | | 04-07-85 |
| 568. | T.M.C. Narayanan | 18-07-37 | TN | " | | 11-07-85 |
| 569. | K.V. Ananthanarayanan | 28-03-54 | TN | " | | 28-06-85 |
| 570. | D. Suresh Babu | 02-01-52 | Kerala | " | | 03-07-85 |
| 571. | P. Balakrishnan | 26-02-38 | Kerala | " | | 01-07-85 |
| 572. | M.L. Sharma | 30-07-45 | Rajasthan | " | | 01-07-85 |
| 573. | Radhey Shyam Singh | 01-08-44 | Bihar | " | | 15-07-85 |
| 574. | Jiwach Mahto | 03-03-46 | Bihar | SC | | 08-07-85 |
| 575. | C. Balasubramaniam | 05-08-37 | TN | Neither | | 15-07-85 |
| 576. | K. Somasundaram | 07-04-40 | TN | " | | 17-07-85 |
| 577. | K.K. Mahajan | 15-01-53 | Lucknow | " | | 16-07-85 |
| 578. | A.B. Ram | 01-06-44 | Lucknow | SC | | 24-07-85 |
| 579. | K. Krishna Rao-II | 01-07-39 | AP | Neither | | 29-07-85 |
| 580. | S.S. Dandekar | 12-02-46 | Pune | SC | | 25-07-85 |
| 581. | M.G. Mhetre | 15-04-40 | Pune | SC | | 29-07-85 |
| 582. | P.T. Nethran | 21-01-41 | Kerala | Neither | | 26-08-85 |
| 583. | D.L. Parmar | 15-04-36 | Gujarat | SC | | 05-08-85 |
| 584. | Kirtinath Hazarika | 01-07-41 | Shillong | ST | | 12-08-85 |
| 585. | Swantra Kumar | 10-07-39 | Kanpur | Neither | | 28-08-85 |
| 586. | M.K. Srivastava | 15-05-54 | Kanpur | " | | 26-08-85 |
| 587. | S.K. Sirkar | 04-01-53 | Kanpur | " | | 28-08-85 |
| 588. | Ganesh Chandra Srivastava | 01-02-43 | Kanpur | " | | 19-08-85 |
| 589. | R.C.F. Verma | 19-10-35 | Bihar | " | | 26-08-85 |
| 590. | P. Madanasekaran | 10-06-52 | TN | " | | 16-09-85 |
| 591. | A. Vijayakumar | 15-12-44 | TN | SC | | 05-09-85 |
| 592. | S.C. Narang | 01-05-50 | Patiala | Neither | | 25-10-85 |
| 593. | Kamal Kapoor | 21-06-51 | Delhi | " | | 31-10-85 |
| 594. | V. Murugesan | 10-01-41 | TN | SC | | 08-11-85 |
| 595. | P. Baktavatsala Menon | 09-12-35 | TN | Neither | | 07-11-85 |
| 596. | P. Parumal | 22-08-44 | TN | SC | | 08-11-85 |
| 597. | B.S. Prabhune | 02-11-39 | Pune | Neither | | 28-11-85 |
| 598. | D.B. Gupta | 05-05-37 | Delhi | " | | 03-12-85 |
| 599. | V.P. Verma | 15-06-37 | Delhi | " | | 03-12-85 |
| 600. | R.L. Dhawan | 06-11-43 | Delhi | " | | 17-02-87 (Deemed) 3-12-85 |
| 601. | G. Manikyala Rao | 25-02-42 | AP | SC | | 04-12-85 |
| 602. | D.P. Dhankar | 10-12-50 | Patiala | Neither | | 17-12-85 |

Contd...18/-



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13 MAR 2003
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

Guwahati Bench
GUWAHATI BENCH ::: GUWAHATI.

In the matter of -

O.A.No. 396/2002

Shri Dipa Jyoti Paul

..... Applicant.

- Vs -

Union of India & Ors.

..... Respondents.

[Written statements filed by the Respondents]

The written statements of the respondents are as follows :-

01. That a copy of the OA No. 396/2002 (referred to as the "application") has been served on the respondents. The respondents have gone through the same and understood the contents thereof. The respondents respectfully submit that the application is liable to be dismissed for non-joinder UPSC as a necessary party.

02. That the statements made in the application, which are not specifically admitted are hereby denied by the respondents.

03. That with regard to the statements made in paras 1 & 2 of the application, the respondents state that these are being matter of records nothing is admitted beyond such records.

04. That with regard to the statements made in para 3, the respondents state that the cause of action arising as back as on 7/3/1997, the application is barred by limitation. It is pertinent to mention here that the appeal preferred by the applicant could not be disposed of due to certain deficiencies pointed out by the UPSC, which could not be reflected in time.

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The authenticated copies of the documents have just been received and the statutory advice of the UPSC is also being obtained. As the process to comply with the Hon'ble Tribunal's order is in progress, there is no causes of action for filing this separate application. Meanwhile, the applicant has retired on superannuation and the benefits, if he gets as a result of the appeal or this application, will be with retrospective effect..

05. That with regard to the statements made in paras 4.1 and 4.2, the respondents state that these being matter of records, nothing is admitted beyond such records. In this connection, it is submitted that every assessing officer is supposed to monitor such cases where suspicion arisen due to heavy refunds irrespective of the fact that the processing under section 143(1) of the Income-tax Act does not require deep scrutiny.

06. That with regard to the statements made in paras 4.3, 4.4, 4.5, 4.6, 4.7, 4.8 and 4.9, the respondents state that these are all matter of records, hence nothing is admitted beyond such records. The Inquiry Officer, however, pointed out negligence on the part of the applicant.

07. That with regard to the statements made in paras 4.10, 4.11, 4.12 and 4.13, the respondents state that these being matter of records, nothing is admitted which are not supported by such records. In this connection, it is further submitted that in such cases, the UPSC is to be consulted and accordingly, when the matter was taken up with the UPSC, the UPSC demanded certain information in details as per proforma devised by them. Since there were certain discrepancies, the UPSC returned the appeal files. These deficiencies have now been made up and UPSC's advice is expected very soon.

08. That with regard to the statements made in paras 4.14 the respondents state that the case of Shri D.J. Paul, ITO (since retired) was also considered with other eligible officers (including Shri M.N. Das, immediate junior of Shri Paul) by the DPC held on 16th, 17th. and 21st. June, 1993 to consider promotion to the grade of ACIT for the year 1992-93. Recommendation of DPC in respect of Shri D.J. Paul was kept in sealed cover as DIT(Vig.) had with held vigilance clearance due to proceeding pending against him. The officers recommended by the DPC in the panel including Shri M.N Das were promoted to ACIT grade on 24/6/1993. Shri

Paul could not be promoted as a penalty of censure was imposed on him by order dated 7/3/1997 and he retired from service on 1/4/1997 on attaining the age of superannuation.

09. That with regard to the statements made in para 4.15 being matter of records, nothing is admitted which are not supported by such records.

10. That with regard to the statements made in paras 4.16 and 4.17, the respondents state that Shri S. K. Mazumdar was given deemed promotion w.e.f. 6/3/1998 on the basis of panel for the year 1997-98 recommended by DPC held in February, 1998, after the charge-sheet/order of penalty were quashed by the Hon'ble CAT/Gauhati High Court, Guwahati.

Penalty of censure was imposed upon Shri K.N. Hazarika on 21/12/1998. Thereafter, when no proceeding was pending against him, he was promoted to the grade of ACIT w.e.f. 12/1/2001 on the basis of panel for the year 1998-99 recommended by the DPC held in December, 2000/January, 2001.

11. That with regard to the statements made in paras 4.18 and 4.19, the respondents state that as stated hereinabove, the process for disposal of appeal filed by the applicant is going on and final result is expected very soon. Hence, the present application is prematured one and liable to be dismissed.

12. That with regard to the statements made in paras 5.1 to 5.9, the respondents state that in view of the fact and circumstances of the case, the grounds shown by the applicant cannot sustain in law. Hence, the application is liable to be dismissed with cost.

13. That the respondents have no comment to offer to the statements made in paras 6 & 7 of the application.

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14. That with regard to the statements made in paras 8.1 to 8.5, the respondents state that under the facts and circumstances of the case in the provisions of law, the present application is misconceived and filed while the statutory appeal is being disposed of after fulfilling the procedure with another statutory authority. Hence, the application being a prematured one, is liable to be dismissed with cost. In this connection the respondents once again reassert that the applicant should have implicate the UPSC as a party as the matter was lying with that authority, but it has not been done by the applicant. Under such circumstances, the applicant is not entitled to any relief whatsoever as prayed for and the application is liable to be dismissed with cost.

In the premises aforesaid, it is therefore, prayed that your Lordship would be pleased to hear the parties, perused the records, and after hearing the parties and perusing the records also be pleased to dismiss the application with cost.

Verification.....

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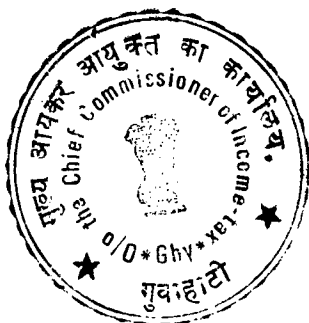
VERIFICATION

I, Kumud Ranjan Das, at present working as the Addl. Commissioner of Income-tax (Vigilance), Guwahati in the office of the Chief Commissioner of Income-tax, Guwahati being competent and duly authorised to sign this verification, do hereby solemnly affirm and state that the statements made in paras 1 to 14 are true to my knowledge and belief, those made in paras _____ being matter of records, are true to my information derived therefrom and the rest are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material fact.

March

And I sign this verification on this 11th day of ~~February~~,

2003 at Guwahati.



Kumud Ranjan Das.

DEPONENT